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## Response to Comment G9-12

See Master Response 19 regarding the No Surprises Assurances.

Adaptive management is an effective tool that land owners apply to monitor the effectiveness of the HCP conservation measures and to allow for adjustment based on new scientific data on covered species.

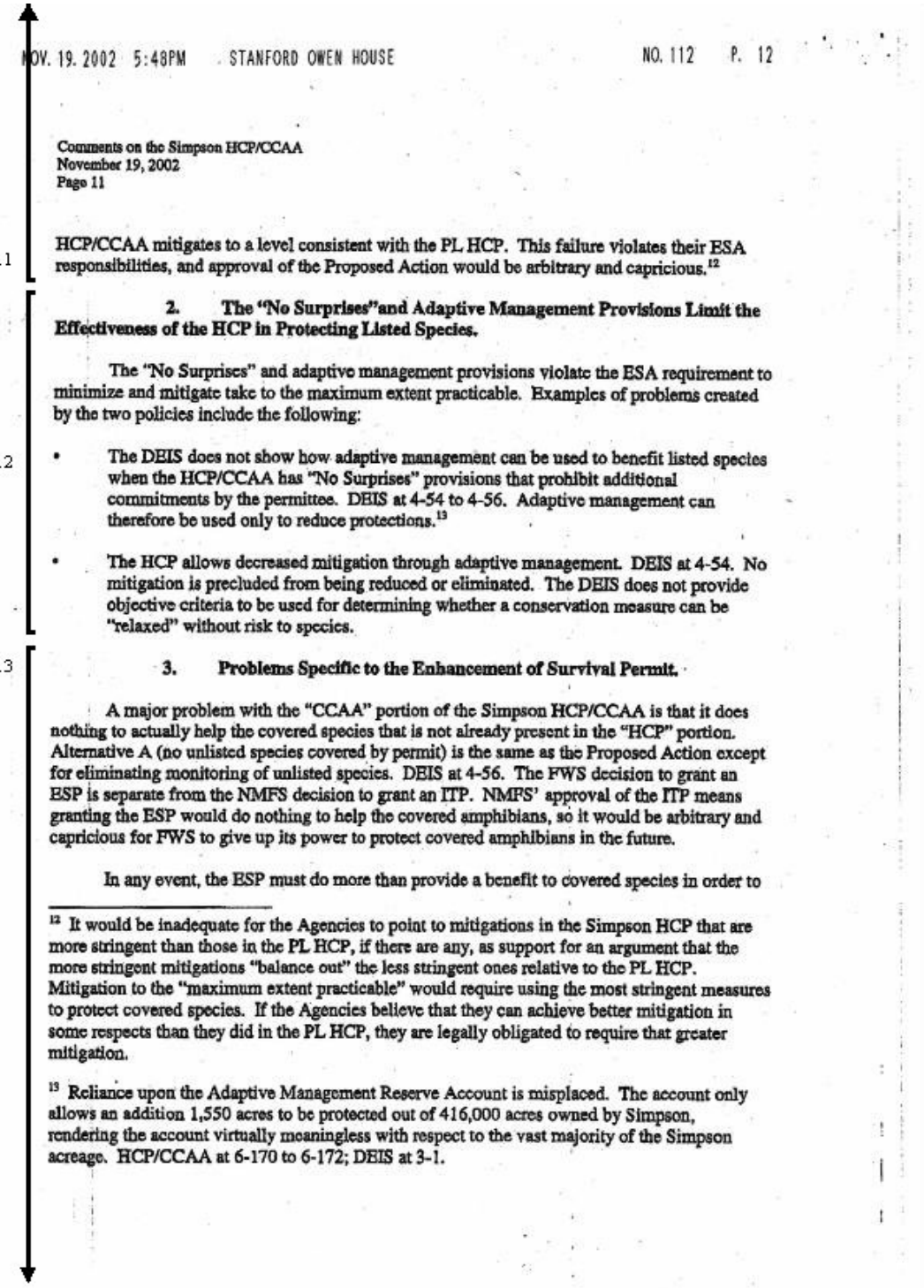
Adaptive management is not intended to address unforeseen circumstances. Further, neither NEPA nor the ESA require the lead agency to demonstrate the effectiveness of adaptive management in the context of unforeseen circumstances.

The commenter states that the "HCP allows decreased mitigation through adaptive management." The Services believe that any adaptive management changes to the Plan will not reduce the effectiveness of the Operating Conservation Program, and that the criteria for utilizing the AMRA is biologically appropriate. Upon issuance of the Permits, Green Diamond would be obligated to adhere to the Permit provisions, and the Services do not anticipate that mitigation measures would be "relaxed."

Regarding Footnote Number 13, see Master Response 15 regarding the AMRA.

## Response to Comment G9-13

The ESA requires that ESP applicants meet ESP application criteria, and that ITP applicants meet the ITP application criteria. These criteria can be found in EIS section 1.3. See generally





G9-11 HCP/CCAA mitigates to a level consistent with the PL HCP. This failure violates their ESA responsibilities, and approval of the Proposed Action would be arbitrary and capricious.[12]

**2. The "No Surprises" and Adaptive Management Provisions Limit the Effectiveness of the HCP in Protecting Listed Species.**

The "No Surprises" and adaptive management provisions violate the ESA requirement to minimize and mitigate take to the maximum extent practicable. Examples of problems created by the two policies include the following:

G9-12
- The DEIS does not show how adaptive management can be used to benefit listed species when the HCP/CCAA has "No Surprises" provisions that prohibit additional commitments by the permittee. DEIS at 4-54 to 4-56. Adaptive management can therefore be used only to reduce protections.[13]
- The HCP allows decreased mitigation through adaptive management. DEIS at 4-54. No mitigation is precluded from being reduced or eliminated. The DEIS does not provide objective criteria to be used for determining whether a conservation measure can be "relaxed" without risk to species.

G9-13 **3. Problems Specific to the Enhancement of Survival Permit.**

A major problem with the "CCAA" portion of the Simpson HCP/CCAA is that it does nothing to actually help the covered species that is not already present in the "HCP" portion. Alternative A (no unlisted species covered by permit) is the same as the Proposed Action except for eliminating monitoring of unlisted species. DEIS at 4-56. The FWS decision to grant an ESP is separate from the NMFS decision to grant an ITP. NMFS' approval of the ITP means granting the ESP would do nothing to help the covered amphibians, so it would be arbitrary and capricious for FWS to give up its power to protect covered amphibians in the future.

In any event, the ESP must do more than provide a benefit to covered species in order to

[12] It would be inadequate for the Agencies to point to mitigations in the Simpson HCP that are more stringent than those in the PL HCP, if there are any, as support for an argument that the more stringent mitigations "balance out" the less stringent ones relative to the PL HCP. Mitigation to the "maximum extent practicable" would require using the most stringent measures to protect covered species. If the Agencies believe that they can achieve better mitigation in some respects than they did in the PL HCP, they are legally obligated to require that greater mitigation.

[13] Reliance upon the Adaptive Management Reserve Account is misplaced. The account only allows an addition 1,550 acres to be protected out of 416,000 acres owned by Simpson, rendering the account virtually meaningless with respect to the vast majority of the Simpson acreage. HCP/CCAA at 6-170 to 6-172; DEIS at 3-1.

Master Response 8. The commenter correctly notes that each of the Services' decisions to issue the Permit(s) within their respective jurisdictions is distinct. In fact, the Plan separately considers ESP and ITP issues when appropriate (see, e.g., AHCP/CCAA Sections 1.4.1 and 7.1) and, also when appropriate, considers them together. The Services, based on analysis provided in the Plan and EIS, believe, with the distinction between ESP and ITP standards in mind, that the Plan satisfies the requirements for issuance of an ESP. By issuing the ESP, the USFWS is not, as the comment suggests, surrendering any authority to protect the currently unlisted covered species in the event that they become listed in the future. Instead, USFWS is formalizing an agreement with a private property owner to provide early conservation benefits for species that are not currently listed under the ESA.

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## Response to Comment G9-14

See Master Response 1 regarding baseline conditions, Master Response 2 regarding the No Action Alternative, including no take, Master Response 10 regarding the No Action Alternative and other alternatives, Master Response 6 regarding the relationship between this Plan and other HCPs, including the Pacific Lumber Company HCP, and Master Response 7 regarding the CFPRs. Further, the Services emphasize that Plan approval and issuance of the Permits would not excuse Green Diamond the obligation to comply with other applicable laws. Instead, the Plan would supplement other applicable requirements. Regarding the regulatory and management context for the Plan, see AHCP/CCAA Section 1.4 and EIS Sections 1.5 and 1.6.

As discussed in response to Comments C5-4, G4-24 and G9-7, among others, the EIS evaluates a reasonable range of alternatives. The Pacific Lumber Company HCP is not an alternative to the Proposed Action in the Green Diamond EIS. The Pacific Lumber Company HCP does however, meet the criteria for consideration in the EIS as a cumulative action and was included in the cumulative effects analysis (see EIS Section 4 and Master Response 3). The Services must consider individual applications for incidental take coverage on their own merit and should not adopt a template format that ignores the circumstances of the different HCP documents. Therefore, the Services cannot require Green Diamond to use the Pacific Lumber Company HCP as a template for the Plan.

Regarding Footnote Number 14 in this comment, see Master Response 6 and the response to Comment G9-2, among others, that discuss evaluation of the Pacific Lumber Company HCP in



G9-13

meet the CCAA standard of avoiding listing. A marginal benefit over existing trends could still lead to listing for a species whose condition is deteriorating. The ESP would then have the negative result of "locking in" inadequate measures that prevent species recovery. The FWS makes no finding that the ESP would avoid listing of covered amphibians in the future.

**II. General National Environmental Policy Act Violations.**

NEPA was created to "promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; [and] to enrich the understanding of the ecological systems and natural resources important to the Nation." 42 U.S.C. § 4321. To accomplish this goal, federal agencies proposing actions that may have a significant effect on the environment must prepare an Environmental Impact Statement before undertaking or allowing the action. *National Parks & Conservation Ass'n ("NPCA") v. Babbitt*, 241 F.3d 722, 730 (9th Cir. 2001); *Salmon River Concerned Citizens v. Robertson*, 32 F.3d 1346, 1356 (9th Cir. 1994). The purpose of an EIS is two-fold: "It ensures that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts; it also guarantees that the relevant information will be made available to the larger [public] audience that may also play a role in both the decisionmaking process and the implementation of that decision." *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989); *Idaho Sporting Congress*, 137 F.3d at 1149; *Columbia Basin Land Protection Ass'n v. Schlesinger*, 453 F.2d 585 (9th Cir. 1981) ("the preparation of an EIS ensures that other officials, Congress, and the public can evaluate the environmental consequences independently").

An EIS does not satisfy NEPA unless "its form, content, and preparation substantially (1) provide decision-makers with an environmental disclosure sufficiently detailed to aid in the substantive decision whether to proceed with the project in light of its environmental consequences, and (2) make available to the public, information of the proposed project's environmental impact and encourage public participation in the development of that information." *Trout Unlimited v. Morton*, 509 F.2d 1276, 1283 (9th Cir. 1974).

G9-14

**A. The DEIS Provides an Inadequate Range of Alternatives, an Inadequate No Action Alternative, and an Inadequate Baseline.**

NEPA requires that an EIS include a "detailed statement" of "alternatives to the proposed action." 42 U.S.C. § 4332(2)(C). The alternatives section is "the heart of the environmental impact statement." 40 C.F.R. § 1502.14. In order to fulfill its intended role of "sharply defining the issue and providing a clear basis for choice among options by the decisionmaker and the public," an EIS must "[r]igorously explore and objectively evaluate **all reasonable alternatives**." 40 C.F.R. § 1502.14(a) (emphasis added); *see also Muckleshoot Indian Tribe*, 177 F.3d at 812-13 (9th Cir. 1999) (holding that an EIS failed to consider an adequate range of alternatives for a land exchange). The Ninth Circuit has held that "[t]he existence of a viable but unexamined alternative renders an environmental impact statement inadequate." *Resources Ltd.*

the context of cumulative effects.

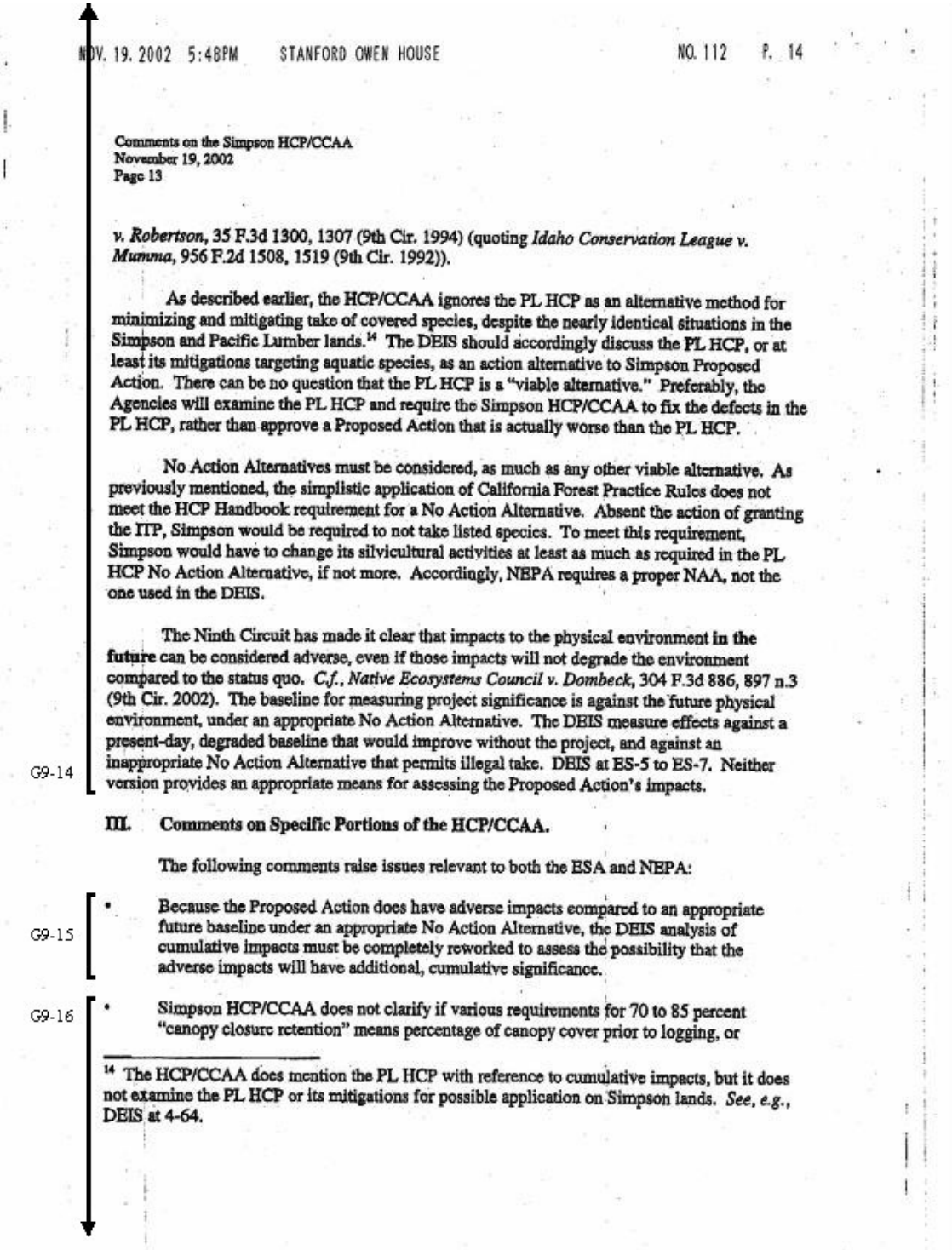
On the basis of the response above and in accordance with CEQ requirements, the EIS does evaluate the No Action Alternative in the level of detail commensurate with the other action alternatives.

## Response to Comment G9-15

See Master Response 1 regarding baseline, Master Responses 3 and 13 and the response to Comment G9-7, among others, regarding the No Action Alternative and other alternatives. See also Master Response 3 regarding cumulative effects. The Services believe that the No Action Alternative (EIS Section 2.1) and the description of existing baseline conditions (EIS Section 3) are appropriate and in accordance with NEPA guidelines.

## Response to Comment G9-16

The Plan does not use the term "canopy closure retention," rather the text is written in the form of the amount of overstory canopy closure. The definition of "canopy closure" is found in AHCP/CCAA Section 10.2, the definitions section. The definition in the Plan is more specific than the definition of "canopy" found in the CFPRs. The Plan states that certain levels of overstory canopy will be "retained," which means the condition will exist after harvesting. Canopy closure refers to the overstory canopy retention of the post harvest stand.





*v. Robertson*, 35 F.3d 1300, 1307 (9th Cir. 1994) (quoting *Idaho Conservation League v. Mumma*, 956 F.2d 1508, 1519 (9th Cir. 1992)).

As described earlier, the HCP/CCAA ignores the PL HCP as an alternative method for minimizing and mitigating take of covered species, despite the nearly identical situations in the Simpson and Pacific Lumber lands.[14] The DEIS should accordingly discuss the PL HCP, or at least its mitigations targeting aquatic species, as an action alternative to Simpson Proposed Action. There can be no question that the PL HCP is a "viable alternative." Preferably, the Agencies will examine the PL HCP and require the Simpson HCP/CCAA to fix the defects in the PL HCP, rather than approve a Proposed Action that is actually worse than the PL HCP.

No Action Alternatives must be considered, as much as any other viable alternative. As previously mentioned, the simplistic application of California Forest Practice Rules does not meet the HCP Handbook requirement for a No Action Alternative. Absent the action of granting the ITP, Simpson would be required to not take listed species. To meet this requirement, Simpson would have to change its silvicultural activities at least as much as required in the PL HCP No Action Alternative, if not more. Accordingly, NEPA requires a proper NAA, not the one used in the DEIS.

The Ninth Circuit has made it clear that impacts to the physical environment **in the future** can be considered adverse, even if those impacts will not degrade the environment compared to the status quo. *C.f., Native Ecosystems Council v. Dombeck*, 304 F.3d 886, 897 n.3 (9th Cir. 2002). The baseline for measuring project significance is against the future physical environment, under an appropriate No Action Alternative. The DEIS measure effects against a present-day, degraded baseline that would improve without the project, and against an inappropriate No Action Alternative that permits illegal take. DEIS at ES-5 to ES-7. Neither version provides an appropriate means for assessing the Proposed Action's impacts. G9-14

**III. Comments on Specific Portions of the HCP/CCAA.**

The following comments raise issues relevant to both the ESA and NEPA:

- Because the Proposed Action does have adverse impacts compared to an appropriate future baseline under an appropriate No Action Alternative, the DEIS analysis of cumulative impacts must be completely reworked to assess the possibility that the adverse impacts will have additional, cumulative significance. G9-15

- Simpson HCP/CCAA does not clarify if various requirements for 70 to 85 percent "canopy closure retention" means percentage of canopy cover prior to logging, or G9-16

[14] The HCP/CCAA does mention the PL HCP with reference to cumulative impacts, but it does not examine the PL HCP or its mitigations for possible application on Simpson lands. *See, e.g.*, DEIS at 4-64.

## Response to Comment G9-17

See Master Response 1 regarding baseline, and Master Responses 2 and 10 regarding the No Action Alternative and other alternatives.

To the Service's knowledge, no additional impact to old growth habitat will occur under the Proposed Action compared to the No Action Alternative. None of the covered species are considered to be dependant on old growth habitat conditions. All existing Federal and State laws that provide ancillary protections of old growth habitat conditions will remain in effect regardless of Permit issuance.

Regarding visual impacts mentioned in Footnote Number 15, as noted in EIS Section 4.8, no additional analysis of visual impacts is necessary because issuance of the Permits is not expected to result in different to visual resources conditions than would result under the No Action Alternative.

## Response to Comment G9-18

Stream temperatures are only partially dependant on riparian management zone width. In general, surface water temperatures are related to local air temperatures and influenced by groundwater. The primary factors affecting air temperature are elevation, aspect, latitude, humidity, wind, and sunlight. Stream temperatures also are affected by stream gradient, stream flow, and water source (groundwater, snowmelt, or rain). The EIS, on pages 4-25 and 4-46, acknowledges that the inner zone width along Class I streams is slightly less under the Proposed Action (50-70 feet)



percentage of the sky that must remain covered by canopy after logging. If the former, the standards will allow significant decreases in canopy cover. For purposes of this letter, EPIC assumes that all references to canopy retention in the HCP/CCAA refer to percentage of sky that is covered by canopy after logging.

G9-16

- The DEIS wholly fails to discuss the effects of the HCP/CCAA on old-growth forests. This omission is striking because compared to present conditions, old-growth would certainly decrease. Compared to a future baseline of a No Action Alternative that does not allow take, as attempted in the NAA for the PL HCP, the Proposed Action will also certainly result in a decrease in old-growth that must be analyzed.[15]

G9-17

- The inner Riparian Management Zone for Class I streams in the Proposed Action is smaller than the (deficient) No Action Alternative. This should result in higher water temperatures, but the DEIS concludes the opposite. DEIS at 4-25 to 4-26; 4-46 to 4-47.

G9-18

- The HCP/CCAA contains no analysis of temperature effects on Class III streams. As compared to wide, no-cut buffers found in the No Action Alternative for the PL HCP, the Proposed Action would result in adverse temperature effects on Class III streams that must be analyzed.

G9-19

- The HCP places no limit on the steepness of slopes where skid trails can exist, or skidding machines operate, creating unacceptable sediment impacts that have not been analyzed. DEIS at 4-26 to 4-30.

G9-20

- DEIS repeatedly asserts that medium and late seral types develop faster under the Proposed Action than in the No Action Alternative, or that riparian zones are better under the Proposed Action than under the NAA. DEIS at 4-65. Aside from Steep Slope Management Zones, where is the difference between the alternatives? The SMZs cover only 8,850 acres. HCP/CCAA at 6-171. In any event, the large no-cut buffer zones in an adequate NAA would clearly provide more development of medium and late seral types than the Proposed Action.

G9-21

- DEIS at 4-109 states riparian zone widths on Class I and II streams are enhanced in the Proposed Action. This is not true for Class I streams.

G9-22

- DEIS claims Large Woody Debris contribution is better in the Proposed Action than in the NAA, but provides no reasons to support the claim.

G9-23

- Salvage of downed trees is allowed in the outer riparian zones where the trees are not currently intercepting sediment or stabilizing slopes. DEIS at 2-24. This ignores the possibility that either the logs could move or the banks could erode back to the point

G9-24

[15] Similarly, visual conditions will decrease compared to a present baseline and compared to an adequate NAA. The DEIS fails to compare the Proposed Action to either baseline.

than occurs under the No Action Alternative (75 feet). However, the effects on microclimate and stream temperatures are not expected to result in significant adverse impacts. Support for this conclusion also is provided in subsequent pages of the EIS and in AHCP/CCAA Appendix C-5.2, where experimental data suggest that the riparian management measures under the Plan would not result in significant impacts on water temperature. (See Master Response 18 regarding riparian widths. See also responses to Comments G10-24 and G10-51, for example, regarding the selection of different or additional conservation measures.)

## Response to Comment G9-19

Class III streams are intermittent in nature, do not provide aquatic habitat, and could affect covered species through altered water temperatures only when water is present. Water is likely to be present in Class III streams only during the spring, fall and winter months due to rainfall; water is generally absent in these streams during the summer months when adverse temperature effects would be expected to be an issue. When flowing, Class III streams can contribute to and affect stream temperatures in Class I and Class II streams. This would occur, however, only at times of the year when temperatures are generally suitable for the covered species. In addition, monitoring in Class II streams has shown that summer water temperatures are generally good, and the covered species that should be most sensitive to water temperature, headwater amphibians, are well distributed throughout the Plan Area.

See Master Response 6 regarding the relationship between the Plan and other HCPs, including the Pacific Lumber Company HCP and Master Response 8 regarding the Section 10(a) approval criteria. See also responses to Comments G10-24 and G10-51, for example, regarding the selection of different or additional conservation measures.

## Response to Comment G9-20

The AHCP/CCAA Section 6.2.2.1 provides prescriptions applicable to operations in SSS areas generally, and the prescriptions in AHCP/CCAA Section 6.2.4.5.2 specifically relate to tractor (tractor operations are limited to slopes < 50%), skidder and forwarder operations in SSSs. The SSS measures in combination with other measures in the Operating Conservation Program that, as a whole, has been analyzed in the EIS. Accordingly, the EIS does address and analyze such potential impacts.

## Response to Comment G9-21

See Master Response 2 regarding the No Action Alternative. Beneficial effects to wildlife species associated with late-seral habitat types are anticipated to be greater under the Proposed Action than under the No Action Alternative as a result of various Plan measures designed primarily to protect riparian areas (see AHCP/CCAA Section 6.2.1). These beneficial effects would result primarily from implementation of increased RMZ widths for Class II streams, wider EEZs for Class III streams, and higher inner- and outer-zone tree and canopy retention standards for RMZs under the Proposed Action compared to the No Action Alternative. See also Master Response 18 regarding riparian widths.

## Response to Comment G9-22

Comment noted. Text in EIS Section 4.8.3 has been revised to delete references to *enhanced* riparian management zone (RMZ) widths for Class I streams under the Proposed Action.

## Response to Comment G9-23

EIS Section 4.4.3.2 (LWD Recruitment) states that: “the overstory canopy closure requirements and tree retention standards under the Proposed Action are equal to or more protective than what is included in the No Action Alternative. This would help to increase the potential for LWD recruitment so that in-channel LWD loading and size is likely to increase in the future.”

Support for this conclusion is provided in the EIS and is based primarily on the following:

- Retention of all trees within the inner zone of RMZs along

Class I streams and portions of Class II streams that are judged likely to recruit LWD to the stream channel.

- Retention of trees in SMZs, such that if a landslide does occur, it has the potential to deliver LWD to the adjacent stream
.
- Limitation to a single commercial harvest entry into the RMZ during the term of the Permits, except when cable corridors are necessary through an RMZ to conduct intermediate treatments..

Only a small proportion of the trees within RMZs would be harvested under the Proposed Action, and those that remain would continue to grow and age following removal of adjacent upland timber stands. Trees in the RMZs would be increasing in age throughout the term of the proposed Plan, such that by the end of the term over one-third of the RMZ stands would be greater than 100 years old and the remainder would be between 51 and 100 years. Based on modeling conducted of future LWD recruitment under the Proposed Action, it is anticipated that 99 percent and 88 percent of the total potential recruitment for managed and site potential tree height would be provided along Class I watercourses, respectively, for site index 100. Along Class II watercourses, 95 percent and 73 percent of LWD recruitment would be attained for managed and site potential tree height, respectively, at site index 100.

## Response to Comment G9-24

As noted in Section 2.2.3.1 of the EIS, the Services would not expect that downed logs in the outer zone would move through the inner zone to be functional LWD, particularly since the inner zone would contain a substantial number of trees post-harvest that would intercept any such movement. The RMZ width for Class I streams is measured from the first line of perennial vegetation or from the outer CMZ or outer floodplain edge (if greater than 150 feet), encompassing the area in which the stream channel is likely to erode or move. Because of this, the Services would not expect the banks to erode an additional 50 to 70 feet (the inner zone) to the point where the logs in the outer zone provide stability.

## Response to Comment G9-25

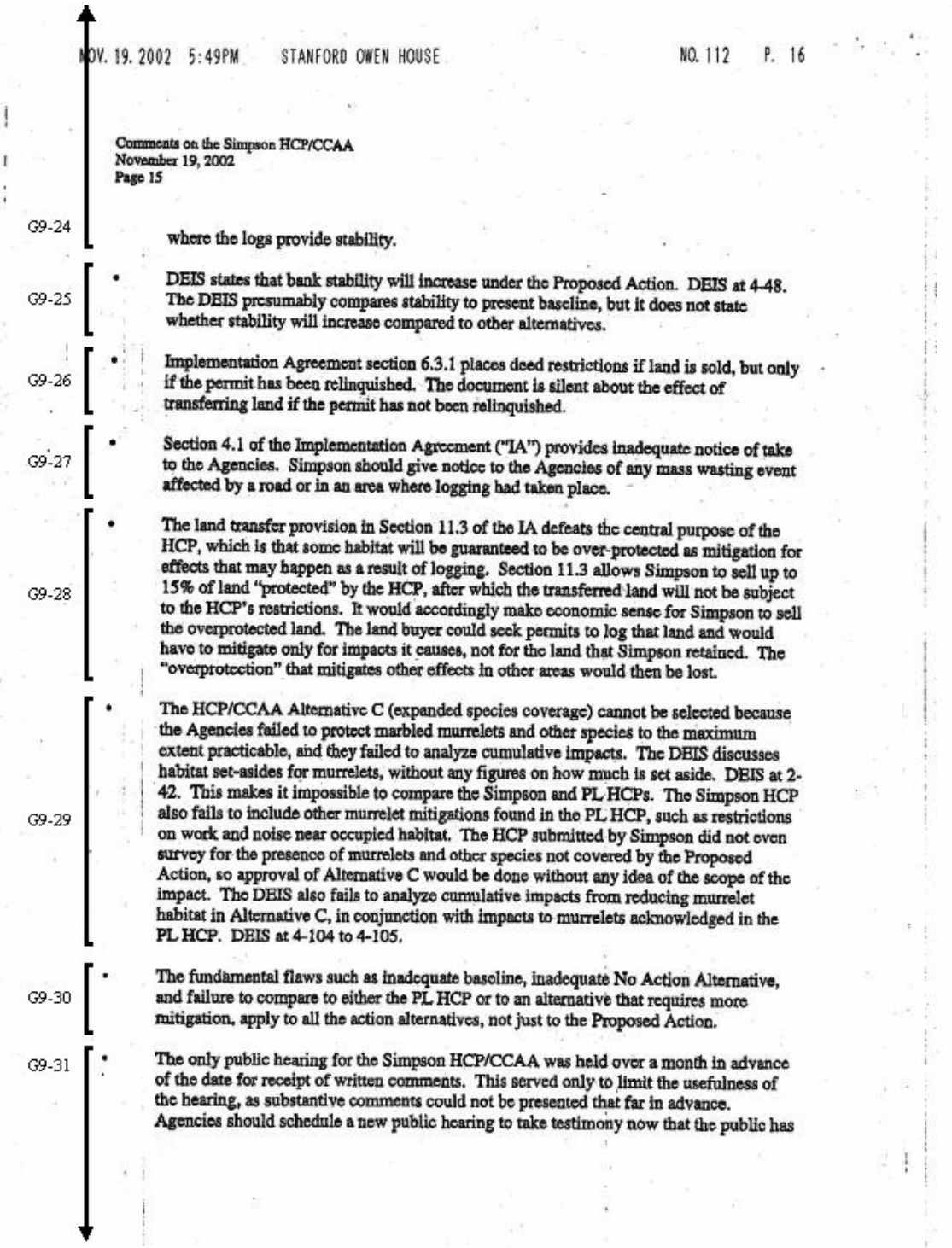
A comparative summary of the potential environmental impacts associated with each alternative, including bank stability, can be found in EIS Table ES-2 and EIS Table 2.7-1. Bank stability for each of the action alternatives is expected to be relatively unchanged in comparison to the No Action Alternative. The analysis of environmental impacts compares current conditions with those expected to occur over time under the No Action Alternative and action alternatives, including the Proposed Action, with the No Action Alternative.

## Response to Comment G9-26

As stated in IA paragraph 11.5, the Plan, the Permits and the IA would "cease to be effective as to Green Diamond for lands removed from the Plan Area in accordance with Paragraph 11 upon Green Diamond's sale, transfer or other deletion…." Accordingly, if the Permits have not been relinquished, no deed restriction would encumber the transfer of title to the property.

## Response to Comment G9-27

As discussed in IA paragraph 4.1, under the Plan and Permits, authorized take of covered species may occur incidental to timber harvest operations as well as other ongoing and continuous covered activities (see AHCP/CCAA Section 1.3.4 and AHCP/CCAA Section 2.0), particularly where those covered activities involve disturbance of Class I and II watercourses. However, there is no information available to determine that take will actually result from any specific timber operation or other covered activity. For these reasons, the Services believe that providing copies of all maps submitted in support of Green



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G9-24 where the logs provide stability.

G9-25 • DEIS states that bank stability will increase under the Proposed Action. DEIS at 4-48. The DEIS presumably compares stability to present baseline, but it does not state whether stability will increase compared to other alternatives.

G9-26 • Implementation Agreement section 6.3.1 places deed restrictions if land is sold, but only if the permit has been relinquished. The document is silent about the effect of transferring land if the permit has not been relinquished.

G9-27 • Section 4.1 of the Implementation Agreement ("IA") provides inadequate notice of take to the Agencies. Simpson should give notice to the Agencies of any mass wasting event affected by a road or in an area where logging had taken place.

G9-28 • The land transfer provision in Section 11.3 of the IA defeats the central purpose of the HCP, which is that some habitat will be guaranteed to be over-protected as mitigation for effects that may happen as a result of logging. Section 11.3 allows Simpson to sell up to 15% of land "protected" by the HCP, after which the transferred land will not be subject to the HCP's restrictions. It would accordingly make economic sense for Simpson to sell the overprotected land. The land buyer could seek permits to log that land and would have to mitigate only for impacts it causes, not for the land that Simpson retained. The "overprotection" that mitigates other effects in other areas would then be lost.

G9-29 • The HCP/CCAA Alternative C (expanded species coverage) cannot be selected because the Agencies failed to protect marbled murrelets and other species to the maximum extent practicable, and they failed to analyze cumulative impacts. The DEIS discusses habitat set-asides for murrelets, without any figures on how much is set aside. DEIS at 2-42. This makes it impossible to compare the Simpson and PL HCPs. The Simpson HCP also fails to include other murrelet mitigations found in the PL HCP, such as restrictions on work and noise near occupied habitat. The HCP submitted by Simpson did not even survey for the presence of murrelets and other species not covered by the Proposed Action, so approval of Alternative C would be done without any idea of the scope of the impact. The DEIS also fails to analyze cumulative impacts from reducing murrelet habitat in Alternative C, in conjunction with impacts to murrelets acknowledged in the PL HCP. DEIS at 4-104 to 4-105.

G9-30 • The fundamental flaws such as inadequate baseline, inadequate No Action Alternative, and failure to compare to either the PL HCP or to an alternative that requires more mitigation, apply to all the action alternatives, not just to the Proposed Action.

G9-31 • The only public hearing for the Simpson HCP/CCAA was held over a month in advance of the date for receipt of written comments. This served only to limit the usefulness of the hearing, as substantive comments could not be presented that far in advance. Agencies should schedule a new public hearing to take testimony now that the public has

Diamond's applications for Streambed Alteration Agreements pursuant to CDFG Code Section 1603, which include information on covered activities that may cause disturbance of Class I and II watercourses, along with the notices of THPs provided pursuant to AHCP/CCAA Section 6.2 provide adequate notice to the Services of potential for such impacts. Further, these provisions satisfy the regulatory notice requirement [50 CFR Section 17.32 (d)(3)(ii)].

## Response to Comment G9-28

The Services took into account the Plan's provisions relating to adding or removing lands from the Plan Area and concluded that the sale of up to 15 percent of Plan Area lands would not result in loss of improvements elsewhere within the Plan Area and that, even if the Plan Area were reduced by 15 percent over the life of the Plan, it would still meet the Section 10(a) approval criteria, which have been discussed in Master Response 8.

## Response to Comment G9-29

Opposition to Alternative C (Expanded Geographic and Species Coverage) is noted. See Master Response 6 regarding the relationship between this Plan and other HCPs, including the Pacific Lumber Company HCP. Marbled murrelets are not a covered species; as indicated, coverage for the marbled murrelet is not being sought pursuant to this ESA Section 10 Permit application. However, under Alternative C, marbled murrelets would be covered species and, therefore, incidental take coverage for murrelets would be provided. Cumulative effects associated with the Proposed Alternative are discussed in Master Response 3. The commenter suggests that the Green Diamond AHCP/CCAA should include additional "murrelet mitigations" contained in the Pacific Lumber Company's HCP. The Services emphasize that preparation of HCPs for different actions and different covered activities must take into consideration the unique aspects and conditions of the species for which an applicant is seeking coverage, the specific activities for which the applicant is seeking coverage, and the unique physical features of the landscape to be affected by issuance of incidental take permits (ITPs). In other words, each HCP must be developed in a way that addresses the specific impacts and identifies measures that will, to the maximum extent practicable, minimize and mitigate the impacts of incidental take given the particular biology, habitat and other characteristics of the HCP planning area. This approach is affirmed in the HCP Handbook. Because of this unique approach that must be tailored to individual HCPs, the Services do not agree that Green Diamond's Plan should be based on information in the Pacific Lumber Company HCP to understand the approach to the Green Diamond Plan. In addition, neither should the Pacific Lumber Company HCP necessarily be the model for the development of Green Diamond's AHCP/CCAA, or necessarily any of the action alternatives, as suggested by the comment. For these reasons, the Services believe that Alternative C provides a valid comparison point among the alternatives in relation to the marbled murrelet.

See also response to Comment G9-2 above and Master Response 6.

## Response to Comment G9-30

See Master Response 1 regarding baseline, Master Responses 2 and 10 regarding the No Action Alternative and other alternatives, and Master Response 6 regarding the relationship between this Plan and other HCPs, including the Pacific Lumber Company HCP and responses to Comments G4-1, G4-2, G4-3, G4-4, G4-5, G4-24, G4-25, G9-2, and G9-29.

## Response to Comment G9-31

The ESA and NEPA both provide opportunities for the public to be involved in the ESA Section 10(a) Permit process and to submit written data, views or arguments with respect to an application (16 USCA Section 1539[c]; 40 CFR Section 1506.6). Here, interested parties have had the opportunity to participate in the process both orally and in writing. The Services published Notice of Availability of the DEIS on August 16, 2002, public hearings were held in Eureka, California, on September 4, 2002, and written public comments were accepted until November 14, 2002. Approximately 1,006 comments were received. As

acknowledged in the comment, there has been sufficient time for the public to review and comment upon the materials provided. Therefore, the Services do not believe that an additional hearing is required or that one would be helpful to their consideration of the issues raised in the application.

## Response to Comment G9-32

The relationship of the Pacific Lumber Company's conservation strategy and the Operating Conservation Program (AHCP/CCAA Section 6.2) has been addressed in Master Response 6. The Services do not address criticisms aimed at Pacific Lumber Company's HCP in these Permit actions.

## Response to Comment G9-33

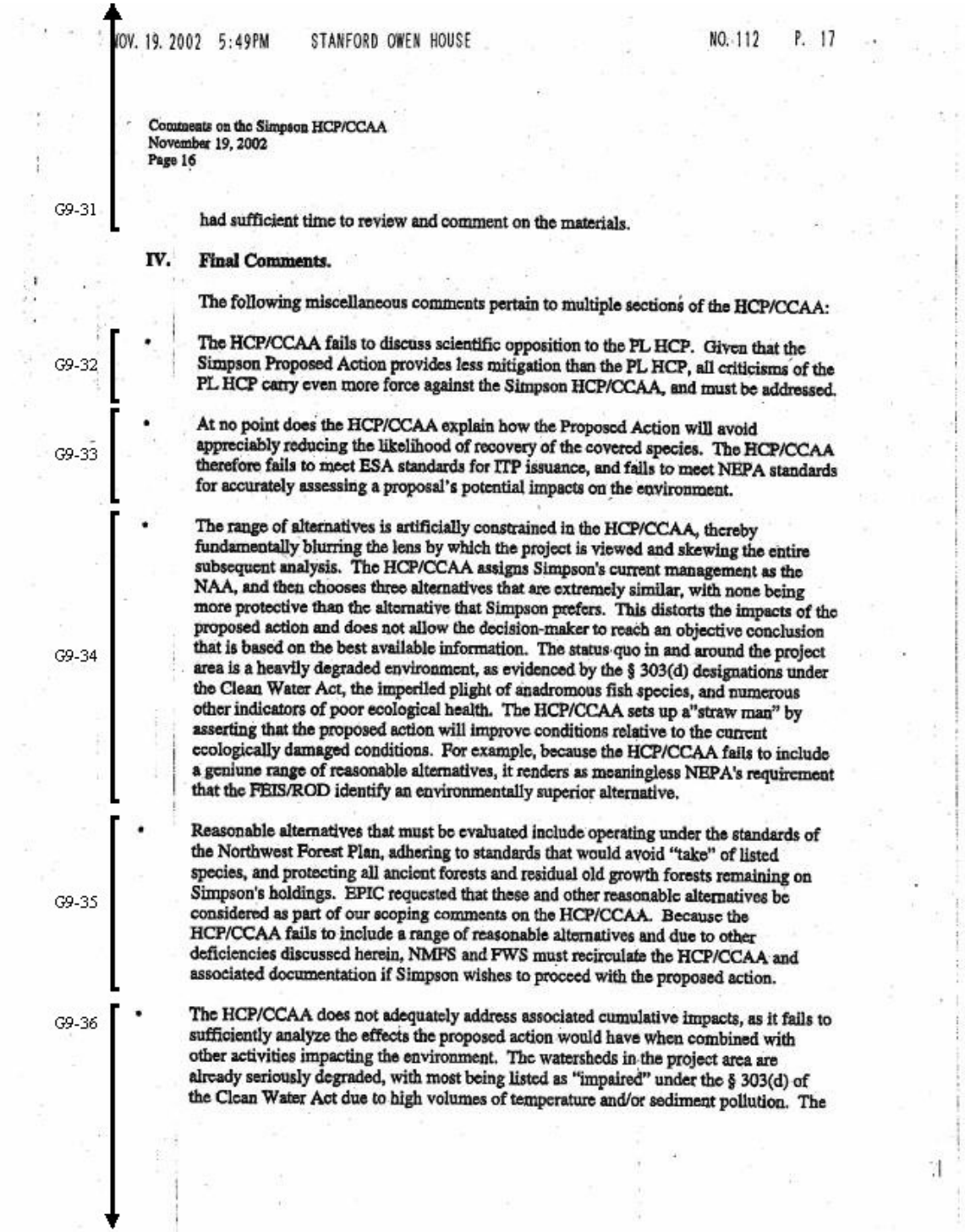
As discussed in Master Response 8 and the response to Comment G6-42, the Plan meets ESA requirements for ITP issuance. Thus, the Plan will "avoid appreciably reducing the likelihood of recovery of the covered species" (see AHCP/CCAA Sections 5.7, 7.1 and 7.4 regarding avoidance of "jeopardy").

## Response to Comment G9-34

Range of Reasonable Alternatives

As discussed in Master Response 10, the Services believe that the analysis of alternatives satisfies NEPA requirements regarding the number and range of alternatives considered. NEPA does not require consideration of every possible alternative among an infinite range of alternatives - the selection of the range is bounded by the concept of reason. NEPA requires only those alternatives to be discussed in the EIS that would achieve the purpose and need of the project.

In satisfaction of ESA requirements, Green Diamond considered and analyzed four alternatives to the Proposed Action, which is set forth in the Operating Conservation Program (AHCP/CCAA



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had sufficient time to review and comment on the materials. (G9-31)

**IV. Final Comments.**

The following miscellaneous comments pertain to multiple sections of the HCP/CCAA:

- The HCP/CCAA fails to discuss scientific opposition to the PL HCP. Given that the Simpson Proposed Action provides less mitigation than the PL HCP, all criticisms of the PL HCP carry even more force against the Simpson HCP/CCAA, and must be addressed. (G9-32)
- At no point does the HCP/CCAA explain how the Proposed Action will avoid appreciably reducing the likelihood of recovery of the covered species. The HCP/CCAA therefore fails to meet ESA standards for ITP issuance, and fails to meet NEPA standards for accurately assessing a proposal's potential impacts on the environment. (G9-33)
- The range of alternatives is artificially constrained in the HCP/CCAA, thereby fundamentally blurring the lens by which the project is viewed and skewing the entire subsequent analysis. The HCP/CCAA assigns Simpson's current management as the NAA, and then chooses three alternatives that are extremely similar, with none being more protective than the alternative that Simpson prefers. This distorts the impacts of the proposed action and does not allow the decision-maker to reach an objective conclusion that is based on the best available information. The status quo in and around the project area is a heavily degraded environment, as evidenced by the § 303(d) designations under the Clean Water Act, the imperiled plight of anadromous fish species, and numerous other indicators of poor ecological health. The HCP/CCAA sets up a "straw man" by asserting that the proposed action will improve conditions relative to the current ecologically damaged conditions. For example, because the HCP/CCAA fails to include a genuine range of reasonable alternatives, it renders as meaningless NEPA's requirement that the FEIS/ROD identify an environmentally superior alternative. (G9-34)
- Reasonable alternatives that must be evaluated include operating under the standards of the Northwest Forest Plan, adhering to standards that would avoid "take" of listed species, and protecting all ancient forests and residual old growth forests remaining on Simpson's holdings. EPIC requested that these and other reasonable alternatives be considered as part of our scoping comments on the HCP/CCAA. Because the HCP/CCAA fails to include a range of reasonable alternatives and due to other deficiencies discussed herein, NMFS and FWS must recirculate the HCP/CCAA and associated documentation if Simpson wishes to proceed with the proposed action. (G9-35)
- The HCP/CCAA does not adequately address associated cumulative impacts, as it fails to sufficiently analyze the effects the proposed action would have when combined with other activities impacting the environment. The watersheds in the project area are already seriously degraded, with most being listed as "impaired" under the § 303(d) of the Clean Water Act due to high volumes of temperature and/or sediment pollution. The (G9-36)

Section 6.2): To satisfy the requirements of NEPA, the Services also analyzed these alternatives and a "no action" alternative. A "Listed ITP Species Only" alternative is discussed in AHCP/CCAA Section 8.2 and EIS Section 2.3; a "Simplified Prescriptions Strategy" alternative is discussed in AHCP/CCAA Section 8.3 and EIS Section 2.4; and an "Expanded Plan Area/Species List" alternative is discussed in AHCP/CCAA Section 8.4 and EIS Section 2.5. The "No Permits / No Plan," or no action alternative, is discussed in AHCP/CCAA Section 8.1 and EIS Section 2.1. The Services believe that these alternatives meet the criteria and guidance of the CEQ and the HCP Handbook, based on the Services' Purpose and Need, as stated in EIS section 1.2. Also, see response to Comment G9-7.

*The No Action Alternative and Baseline Conditions*

Regarding baseline conditions and the characterization of the No Action Alternative, see Master Responses 1 and 2, respectively. As stated in EIS Chapter 2.1, under the No Action Alternative, the Services would not issue the requested ITP or ESP and Green Diamond would not implement the Plan. This means that existing "No Action" activities would continue, pursuant to all over applicable State and Federal laws and regulations, including the ESA's prohibition on unauthorized take of listed species (Regarding the regulatory and management context for the Plan, see AHCP/CCAA Section 1.4 and EIS Sections 1.5 and 1.6). The most meaningful points of comparison are with the project (Permit issuance and Plan implementation - the "Proposed Action") and without the project (no Permits, no Plan - the "No Action Alternative"). The EIS evaluates the No Action Alternative relative to current conditions, and evaluates the Proposed Action (Plan implementation) relative to conditions expected to occur over time under the No Action Alternative, which was developed in consideration of NEPA guidance provided in "NEPA's Forty Most Asked Questions."

## Response to Comment G9-35

For the reasons discussed in response to Comments G9-7, G9-34 and Master Response 10, among others, the Services believe that a reasonable range of alternatives has been included in the Plan and the EIS.

See also EIS Section 2.6.1.2, discussing the Services' belief that Federal management issues contained in the NWFP are not directly pertinent to privately owned lands or the uses of those private lands, based on economic operational considerations, management objectives, and the wide range and number of listed and unlisted species considered in the design of the NWFP standards for which Green Diamond is not seeking authorization for incidental take. However, all pertinent available information was considered, including the NWFP, in developing the other action alternatives in the EIS. See also EIS Section 1.2 ("Purpose and Need").

Because we believe the Plan and EIS, including the range of alternatives, satisfy ESA Section 10(a) Permit issuance criteria discussed in AHCP/CCAA Section 1.4.1, EIS Section 1.3 and Master Response 8, no significant new information relevant to environmental concerns and bearing on the Proposed Action or its impacts has been added and no significant changes in the analysis have been made. Therefore, recirculation is not required.

## Response to Comment G9-36

Baseline Conditions

Regarding consideration of existing conditions, including water quality conditions in the Plan Area (which also are discussed in AHCP/CCAA Section 4.3.6 and Table 4 3), and the September 2002 die-off of fish in the Klamath River, see Master Response 1. Plan approval and issuance of the Permits would provide a layer of regulation in addition to otherwise applicable laws. In other words, such actions would not excuse Green Diamond from its obligation to comply with any applicable water quality or other law governing Humboldt Bay. To the extent that covered activities in the Plan Area could affect Humboldt Bay and are regulated, such regulation would continue following Plan approval and issuance of the Permits just as it would if no application

had been made under ESA Section 10(a). See also responses to Comments C4-14, G2-8, R1-27, S5-1, S5-41 and S5-48, among others.

### *Herbicide Use*

Regarding herbicide use, see Master Response 4. Herbicide use is not a covered activity (AHCP/CCAA Section 1.3.4 and 2) and Green Diamond did not apply for ITP/ESP coverage relating to herbicide applications.

### *Fire Suppression*

Fire suppression is not a covered activity (AHCP/CCAA Section 1.3.4 and 2) and Green Diamond did not apply for ITP coverage relating to fire suppression. In order to reduce confusion, the first sentence of AHCP/CCAA Section 6.3.9.1.2, Fire - Supplemental Prescriptions, has been modified as follows:

> "Fire suppression is not a covered activity. ~~If during the term of the Plan, a fire less than 10,000 acres occurs in the Plan Area,~~ However, Green Diamond might ~~may~~ take all measures reasonably necessary to extinguish ~~the~~ a fire less than 10,000 acres, including measures that deviate from the Section 6.2 conservation measures, if one occurs during the term of the Plan."

Fire suppression would remain the same under the Proposed Action as under the No Action Alternative, except that under the No Action (no Permits/no Plan) scenario Green Diamond would remain subject to the ESA Section 9 take prohibition. Further, the cumulative impacts evaluation for the Plan and EIS did not identify the potential for cumulative impacts to result from the combination of Plan implementation and fire suppression. The Services believe that the Plan and EIS adequately and properly consider fire suppression in their evaluation of the impacts of taking and potential cumulative effects on the covered species and the environment.

### *Rock Pits*

Rock pit quarrying is a covered activity and Green Diamond did apply for incidental take coverage for it. This activity would remain the same under the Proposed Action as under the No Action Alternative, except that under the No Action (no Permits/no Plan) scenario Simpson would remain subject to the ESA Section 9 take prohibition and with Plan implementation and issuance of the Permits, Green Diamond would be authorized to take the covered species incidental to otherwise lawful activities. The effects associated with implementation of Plan conservation measures that relate to these and other activities are discussed in Chapter 4 of the EIS.

### *Cumulative Effects*

Regarding cumulative impacts and the geographic scope of analysis, see Master Response 3 and the response to Comments G10-5 and J1-1, among others; see also EIS Section 1.4 (Action Area). Cumulative impacts are assessed in Section 4 of the EIS. Section 4.1.2 presents the CEQ regulations for assessing cumulative impacts and provides the framework for applying that analysis to the Plan. Specifically, Sections 4.1.2.2 and 4.1.2.3 of the EIS establishes criteria for identifying those past, present, and reasonably foreseeable future actions that have the potential to combine with the incremental effects of the Proposed Action. These criteria include actions that have an application pending before an agency with permit authority and those that are of a similar character, could affect similar resources, or are located in geographic proximity to the Proposed Action. The EIS also establishes the geographic extent of the cumulative impact area to be the Action Area (see Section 1.4 of the EIS and Master Response 3).

The past and present actions are addressed in the context of the No Action Alternative and the Proposed Action, respectively. The future actions include the continued implementation of the following:

- CFPRs on non-Green Diamond commercial timberland

- Conservation measures contained in the Pacific Lumber Company's HCP on Pacific Lumber Company lands

- Aquatic and riparian resource guidelines contained in the NWFP on Federal lands

- Management within State and Federal parks

- Private land agriculture and grazing

. Using this approach to assessing cumulative impacts, a cumulative impact assessment was conducted for each of the resource areas evaluated in the EIS. These analyses are conducted within each of the resource areas in EIS Sections 4.2 through 4.12.

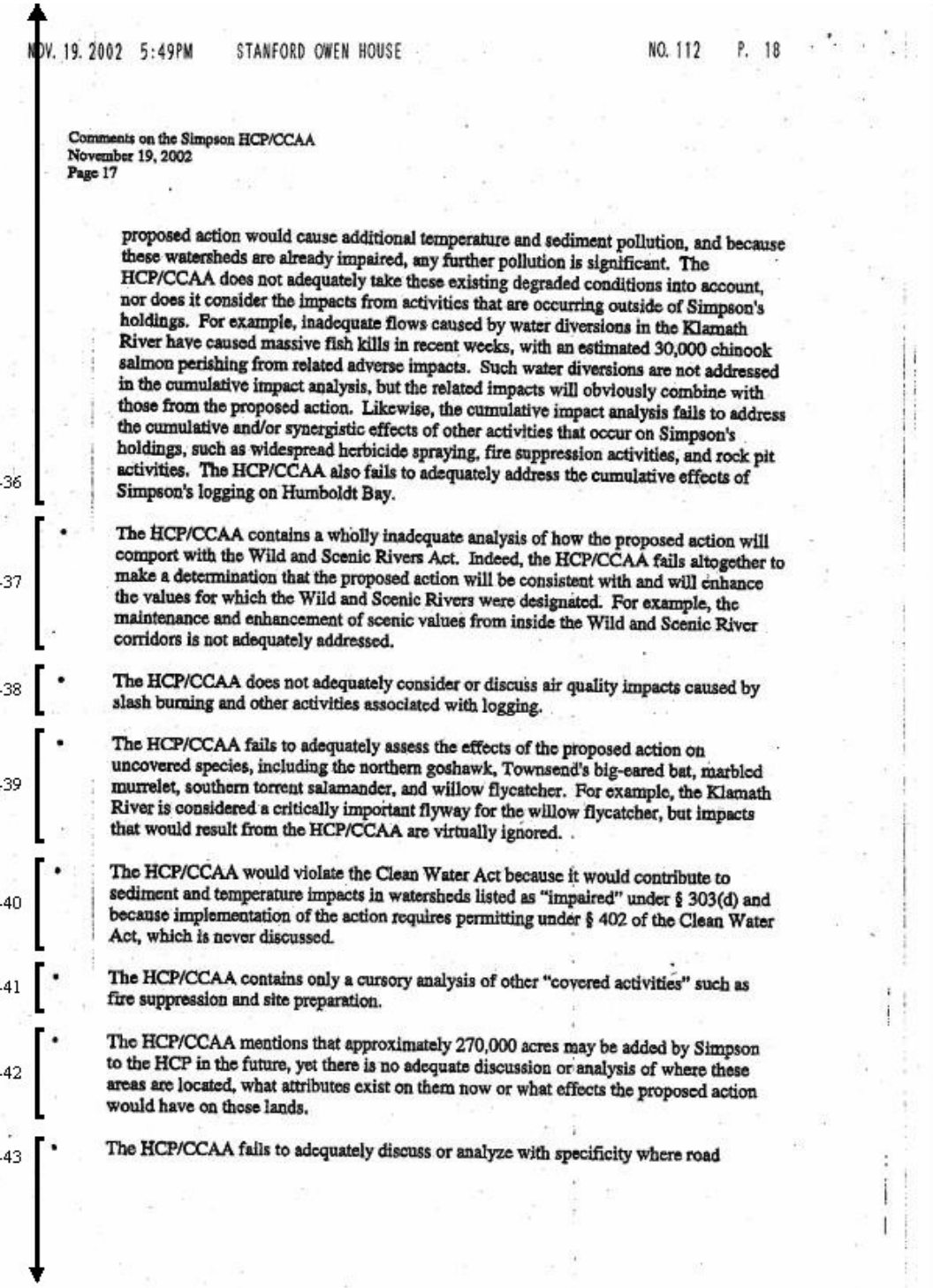
The scope of the analysis, including cumulative impacts, is the Assessment Area, the 11 HPAs plus the additional 25,677 acres of rain-on-snow for Alternative C. The CEQ guidelines state that cumulative effects analyses should be limited to the effects that can be evaluated meaningfully by the decision makers. The guidelines further state that the area to use in defining the cumulative impacts geographical boundary should extend to the point at which the resource is no longer affected significantly (CEQ, 1997). Water diversion projects on the upper Klamath River are outside the 11-HPA Assessment Area.

## Response to Comment G9-37

Issuance of the Permits would not change Green Diamond's existing obligation to comply with otherwise applicable laws (see AHCP/CCAA Section 1.4 and the response to Comment T1-1 and the other responses cited therein),including any applicable provision of the Wild and Scenic Rivers Act. The EIS, however, does address the Wild and Scenic Rivers Act. In EIS Section 3.8, the text states: "The Primary Assessment Area is in the vicinity of the Eel, Klamath, and Smith rivers, portions of which are designated Federal Wild and Scenic Rivers." The Operating Conservation Program (AHCP/CCAA Section 6.2) would not result in visual and recreational impacts to wild and scenic rivers because, as discussed in EIS Section 4.8.3, "the potential for impacts to visual resources is expected to be comparable to the conditions described above for the No Action Alternative." This same finding is made for recreational impacts (see EIS Section 4.9.3).

## Response to Comment G9-38

The EIS discusses the air quality impacts associated with implementing the Plan and other alternatives as an element of NEPA review (see EIS Section 4.7). Normal site preparation activities such as broadcast burning occur as part of the ongoing timber management practices described under the No Action Alternative; these actions are taken pursuant to existing local, State, and Federal regulations and the NSO HCP (see especially EIS Section 2.1.1.2). No element of the Plan would change Green Diamond's use of broadcast burning. The commenter does not describe what "other activities associated with logging" should be



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proposed action would cause additional temperature and sediment pollution, and because these watersheds are already impaired, any further pollution is significant. The HCP/CCAA does not adequately take these existing degraded conditions into account, nor does it consider the impacts from activities that are occurring outside of Simpson's holdings. For example, inadequate flows caused by water diversions in the Klamath River have caused massive fish kills in recent weeks, with an estimated 30,000 chinook salmon perishing from related adverse impacts. Such water diversions are not addressed in the cumulative impact analysis, but the related impacts will obviously combine with those from the proposed action. Likewise, the cumulative impact analysis fails to address the cumulative and/or synergistic effects of other activities that occur on Simpson's holdings, such as widespread herbicide spraying, fire suppression activities, and rock pit activities. The HCP/CCAA also fails to adequately address the cumulative effects of Simpson's logging on Humboldt Bay.

G9-36

- The HCP/CCAA contains a wholly inadequate analysis of how the proposed action will comport with the Wild and Scenic Rivers Act. Indeed, the HCP/CCAA fails altogether to make a determination that the proposed action will be consistent with and will enhance the values for which the Wild and Scenic Rivers were designated. For example, the maintenance and enhancement of scenic values from inside the Wild and Scenic River corridors is not adequately addressed.

G9-37

- The HCP/CCAA does not adequately consider or discuss air quality impacts caused by slash burning and other activities associated with logging.

G9-38

- The HCP/CCAA fails to adequately assess the effects of the proposed action on uncovered species, including the northern goshawk, Townsend's big-eared bat, marbled murrelet, southern torrent salamander, and willow flycatcher. For example, the Klamath River is considered a critically important flyway for the willow flycatcher, but impacts that would result from the HCP/CCAA are virtually ignored.

G9-39

- The HCP/CCAA would violate the Clean Water Act because it would contribute to sediment and temperature impacts in watersheds listed as "impaired" under § 303(d) and because implementation of the action requires permitting under § 402 of the Clean Water Act, which is never discussed.

G9-40

- The HCP/CCAA contains only a cursory analysis of other "covered activities" such as fire suppression and site preparation.

G9-41

- The HCP/CCAA mentions that approximately 270,000 acres may be added by Simpson to the HCP in the future, yet there is no adequate discussion or analysis of where these areas are located, what attributes exist on them now or what effects the proposed action would have on these lands.

G9-42

- The HCP/CCAA fails to adequately discuss or analyze with specificity where road

G9-43

evaluated. Where the Proposed Action or other action alternatives propose changes in "other activities associated with logging" relative to the No Action Alternative, such as road management, the air quality impacts of those changes are evaluated in EIS Section 4.7.

## Response to Comment G9-39

EIS Section 4.6, Terrestrial Habitat/Wildlife Species of Concern, evaluates the potential impacts to terrestrial habitat and wildlife species as a result of implementing the Proposed Action and the alternatives, including the No Action Alternative. The assessment, although focused on wildlife species of concern (as defined in the EIS), also addresses impacts to other wildlife species and relies on widely accepted associations between habitat type and wildlife use. EIS Section 4.6.1 discusses the methodology used in the assessment. EIS Table 4.6-1 presents: (1) a list of all the wildlife species (listed and unlisted) known or likely to occur within the Primary Assessment Area; and (2) a summary of potential impacts associated with the No Action and other alternatives. For all species and all alternatives, either no impacts would occur or the impacts would be minor and, in general, beneficial.

As noted in EIS Table 4.6-1, potential impacts to the northern goshawk, Townsend's western big-eared bat, and little willow flycatcher under the Proposed Action are the same as the No Action Alternative, where changes in associated habitats and populations are anticipated to be negligible over time. On the other hand, enhanced late-seral forest, riparian, an aquatic conditions resulting from implementation of the operating Conservation Program under the Proposed Action would likely provide greater benefits to the southern torrent salamander compared to the No Action Alternative.

## Response to Comment G9-40

As mentioned above, Plan approval and issuance of the Permits would not change Green Diamond's existing legal obligation to comply with all applicable laws (see AHCP/CCAA Section 1.4, and the response to Comment G9-37). Because implementation of the Operating Conservation Program (AHCP/CCAA Section 6.2) would add an additional layer of regulation and would not excuse Green Diamond from compliance with any law, including Federal and State water quality laws, the Services do not expect that the Plan would, as is suggested in the comment, violate the CWA. See Master Response 1 specifically regarding the relationship among baseline, legacy and pristine conditions. See also AHCP/CCAA Section 4.3.6, regarding watersheds listed as "impaired" on the 303(d) list under the CWA. Further, based on analysis provided in the Plan and EIS, the Services expect that water quality conditions would improve as a result of implementation of the Operating Conservation Program in the Plan Area.

The Services expect that implementation of the Plan conservation measures under the Proposed Action would reduce the potential for effects on water quality in Primary Assessment Area streams. Under the Proposed Action, sediment production and delivery that could result in increased sediment loading, sedimentation, and turbidity in Primary Assessment Area streams would be reduced compared with both existing conditions and conditions anticipated to occur over time under the No Action Alternative. See AHCP/CCAA Sections 6.2.2 (slope stability measures), 6.2.3 (road management measures), and 6.2.4 (harvest-related ground disturbance measures). The Proposed Action's canopy closure requirements and tree retention standards are more protective than those that would be implemented under the No Action Alternative. Canopy closure, while expected to slightly decrease immediately following harvesting, is likely to increase from current conditions in all stands as they regrow subsequent to timber harvesting. The overall increase in canopy closure is anticipated to result in slight decreases in water temperatures in Primary Assessment Area streams. The reduction in sediment production and delivery and slight decrease in water temperatures anticipated with implementation of the Plan would not contribute to sediment and temperature impacts in watersheds listed as impaired. To the contrary, water quality conditions in these watersheds are expected to improve. See also response to Comment G6-42.

Implementation of the Plan does not require permitting under Section 402 of the CWA, which applies to point-source discharges requiring an NPDES permit. However, the applicant will be required to comply with

all applicable provisions of water quality laws, including the Porter-Cologne Act and CWA- and TMDL-related requirements (see generally the response to Comment S5-59, and the responses to Comments R1-27, S1-51, S5-1, S5-41, S5-48 S5-64, and S5-72 regarding water quality laws).

## Response to Comment G9-41

The Services evaluated the cumulative impacts of forest management activities covered by the permits as they would be conducted under the Proposed Action and the alternatives, including the No Action Alternative. Covered activities are described in AHCP/CCAA Section 2. The potential impacts of take on the covered species that are associated with the covered activities are evaluated at length in the Plan and EIS. See EIS Chapter 4 (Environmental Consequences). Accordingly, the Services believe that the discussion of covered activities, including site preparation, is adequate. Fire suppression is not a covered activity. See response to Comment G4-3.

## Response to Comment G9-42

As discussed in EIS Section 4.1.1 and AHCP/CCAA Section 1.3.2, the physical scope of the area where incidental take will be authorized under the Permits and the Plan will be implemented - called the "Primary Assessment Area" in the EIS and "Eligible Plan Area" in the Plan - includes 683,674 acres of commercial timberlands within those portions of the 11 HPAs where Green Diamond operates or could operate during the term of the Permits. The HPAs are described in detail in EIS Section 3.1 and throughout EIS Chapter 3, as well as in Plan Section 4. As explained in IA Paragraph 11.2, based upon the analysis of the HPAs provided in the Plan (Sections 4, 5 and 7) and EIS, it is presumed that all commercial timberlands within each HPA where incidental take would be authorized and Plan implementation would occur share similar relevant characteristics. Therefore, adding such lands to the Plan Area during the term of the Permits will not likely result in adverse effects on the covered species different from those analyzed in connection with the original Plan. If Green Diamond proposes to add lands to the Plan Area, the Services may object, or rebut the presumption, in accordance with the procedures set forth in IA Paragraph 11.2.

## Response to Comment G9-43

It is not possible to discuss or analyze the location of each future new road or rock pit with any specificity in the Plan. However, wherever such are constructed, they will meet the new road construction standards set forth in AHCP/CCAA Section 6.2.3.5. Regarding the location of rock pits, AHCP/CCAA Section 6.2.3.14 indicates that new rock quarries will not be established within a Class I or II RMZ and that the Company will not use any portion of an existing rock pit that is within 150 feet of a Class I watercourse, 100 feet of a Class II-2 watercourse, or 70 feet of a Class II-1 watercourse.

The comment does not explain why the specific location of any new roads or rock quarries is relevant or why the approach laid out in the Plan, i.e., prescribing measures that will apply to construction of roads and rock pits in addition to all existing laws and regulations that already limit their allowable locations.

In AHCP/CCAA Section 2.2.6, regarding rock pit construction and use, it indicates that rock production may occur by crushing or blasting, among other methods. Sound impacts are not expected to be significant. As discussed in EIS Section 3.1, because no differences in noise effects are expected as a result of issuing the proposed permits, noise issues did not warrant further analysis in the EIS.

## Response to Comment G9-44

For the reasons stated in the responses to comments in this letter and others, in Master Response 3 regarding cumulative effects and Master Response 8 regarding the ESA Section 10 Permit issuance criteria, and based on analysis presented in the Plan and EIS, the Services believe the Plan and EIS support Plan approval and issuance of the Permits. In addition, the Services have not made substantial changes in the Proposed Action that are relevant to environmental concerns, and no significant new circumstances or information relevant to environmental concerns and bearing on the Proposed Action or its impacts has arisen since the publication of the Draft EIS. Therefore, recirculation is neither appropriate nor necessary.



G9-43 construction and rock pit activities will occur. The HCP/CCAA fails to contain a discussion of whether these rock pits will use explosives and the resulting impacts to the environment from sounds associated with blasting.

**V. Conclusion.**

G9-44 For all the reasons described above, the Agencies may not approve the HCP/CCAA as currently designed. If Simpson maintains its interest in receiving an ITP and ESP, the HCP/CCAA and associated documentation must be revised and recirculated.

Sincerely,

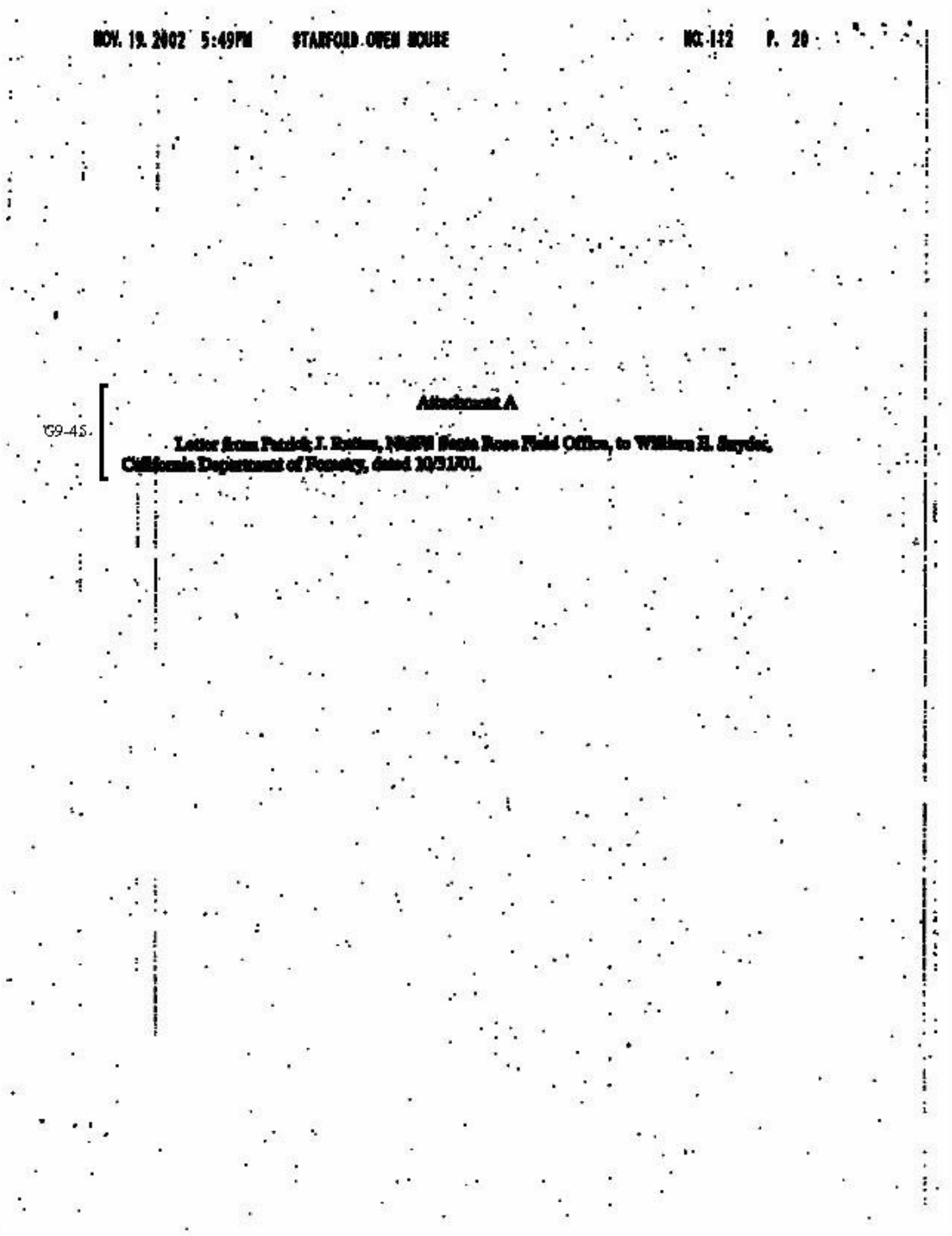
BRIAN A. SCHMIDT

BAS:lfj
pc: Cynthia Elkins
Environmental Protection Information Center
P. O. Box 397
Garberville, CA 95542

Attachments

Response to Comment G9-45

See response to Comment G9-3.



Southwest Region
777 Sonoma Avenue, Room 325
Santa Rosa, California 95404

July 31, 2001 151422SWR01SR486:CAA/JMA

Mr. William E. Snyder
Division Chief, Forest Practice
California Department of Forestry and Fire Protection
135 Ridgway Avenue
Santa Rosa, California 95401

Dear Mr. Snyder:

The National Marine Fisheries Service (NMFS) has received and reviewed the proposed Timber Harvest Plan (THP) 1-01-170 SCR submitted to the California Department of Forestry and Fire Protection (CDF) by Roger and Michelle Burch, timberland owners. The proposed harvest plan lies within the ranges of the following species which have been listed as threatened under the federal Endangered Species Act (ESA): Central California Coast (CCC) Evolutionarily Significant Unit (ESU) coho salmon (*Oncorhynchus kisutch*) listed as threatened on October 31, 1996 (61 FR 56138) and CCC ESU steelhead trout (*Oncorhynchus mykiss*) listed as threatened on August 18, 1997 (62 FR 43937).

The cover letter to the NMFS attached to the THP requests that the NMFS provide CDF a written determination with supporting explanation as to whether this THP would result in either a 'taking' or 'finding of jeopardy' with respect to listed salmonids. Since CDF's approval of the proposed THP is not a federal action, 'jeopardy' is not the standard for THP reviews. CDF, the plan submitter and the timberland owner bear the responsibility of ensuring forest practice activities are not resulting in 'take' of listed salmonids and are being approved and implemented in compliance with the ESA and other applicable laws.

The cover letter also states, "..., CDF will ensure the THP includes feasible measures to either avoid impacts to Coho Salmon and its habitat or to ensure impacts are reduced to a level of insignificance." Nowhere in the Federal ESA sections dealing with take of a listed species do the concepts "feasible measures" or "impacts...reduced to a level of insignificance" appear. Timber harvest activities have been identified under the definition of "harm" (64 FR 6072) as an action that may result in a take of a listed species under the ESA. Take of coho salmon is prohibited pursuant to section 4(d) of the ESA concurrent with the listing (61 FR 56138). Take of steelhead trout is prohibited pursuant to section 4(d) of the ESA (65 FR 42422). Absent an ESA section 4(d) limitation on the take prohibitions dealing with forestry activities in California or an ESA section 10(a)(1)(B) permit, the standard for timber harvest planning and approval in

California is no take.

To evaluate the potential impairment of salmonid behavior patterns (e.g. spawning, rearing, migrating and sheltering), NMFS staff participated in a field review on July 10, 2001 of the Lompico THP (1-01-170 SCR). NMFS has determined the proposed THP operations if implemented, without additional modifications, is likely to impair essential behavior patterns as defined by the "Harm" rule (November 8, 1999, 64 FR 6072). NMFS is herein providing written documentation of THP revisions that NMFS finds necessary for this plan to avoid, to the maximum extent practicable, the unauthorized taking of federally listed anadromous salmonids. The measures presented herein were tailored to avoid adverse effects to federally listed salmonids per operations associated with this harvest plan and based, as much as feasible, on site specific conditions and the availability of information provided in the planning document. These recommendations are the best that can be provided by the NMFS without a comprehensive watershed assessment addressing cumulative impacts to threatened salmonids and their habitats.

NMFS' recommendations are guided by the Salmonid Conservation Measures for a Short-Term Habitat Conservation Plan (Short Term HCP Guidelines) and Salmonid Guidelines for Forestry Practices in California (Salmonid Guidelines) presented to the California Board of Forestry in December of 1999 (See Attachments).

The plan submitter and timberland owner may propose alternative measures that demonstrate to the NMFS that adverse effects to CCC ESU coho salmon (if present) and CCC ESU steelhead trout in Lompico Creek will not occur if operations proceed differently than those recommended by the NMFS. In addition, NMFS's recommended revisions need not preclude future timber harvest opportunities by the landowner for the areas currently suggested by the NMFS for no harvest. A state conservation standard for anadromous salmonids could be developed and, if accepted by the NMFS, would allow the plan submitter to amend the harvest plan to meet such standards and minimize ESA liability. Also, the landowner could obtain an approved Habitat Conservation Plan per section 10(a)(1)(A) of the ESA.

**Summary of Proposed Operations**

| | |
|---|---|
| Silviculture: | 204 Acres Selection |
| Equipment: | Tractors, skidders, and helicopter |
| Erosion Hazard: | Moderate, High, and Extreme |
| Unstable Areas: | Yes |
| Winter Operations: | Yes |
| Class I Zones: | 150 foot (slope distance) watercourse and lake protection zone (WLPZ) |

**Class I Canopy:** 85% postharvest overstory canopy for first 75 feet from the transition line

65% postharvest overstory canopy (25% conifer) in the remaining WLPZ

**Class II Zones:** Slopes < 30% 50 foot WLPZ
Slopes 30-50% 75 foot WLPZ
Slopes >50% 75 foot WLPZ (25 feet reduction for helicopter)

**Class II Canopy:** 70% postharvest overstory canopy in the first 25 feet of WLPZ
65% postharvest overstory canopy within the remainder of the WLPZ

50% overstory canopy on Class II's dry by June 1
25% conifer overstory remaining postharvest

**Class III Zones:** Slopes < 30% 25 foot equipment limitation zone (ELZ)
Slopes 30-50% 50 foot ELZ

**Class III Canopy:** No described canopy retention standards

**Instream Activity:** No

**Acres in THPs approved in the Zayante Watershed within last 10 years:** Approximately 1324

**Total acres in Zayante Watershed Assessment Area:** Approximately 10,749

**Acres in THPs approved in Newell Creek Watershed within last 10 years:** Approximately 1162

**Total acres in Newell Creek Watershed Assessment Area:** Approximately 6,224

**Impaired Waterbody [Section 303(d) of the Clean Water Act]:** Yes; Sediment Impaired

**Setting**

Lompico and Zayante Creeks are tributaries to the San Lorenzo River that drain an area of 138 square miles, discharging to Monterey Bay at the City of Santa Cruz, Santa Cruz County, California. The San Lorenzo River is the primary municipal water source of the greater Santa Cruz area, with approximately 85,000 customers (County of Santa Cruz 2000). Approximately 75,000 people live within the watershed and obtain water supply from smaller streams and groundwater basins within the watershed (County of Santa Cruz 2000).

Watersheds within the San Lorenzo River are convoluted and incised with many ridges

and deep ravines. Slow downward soil movement and landslides are the natural erosional processes chiefly responsible for forming the topography of this area. Numerous faults cross the San Lorenzo Valley and pose a potential geologic hazard and contribute overall to sediment loading in the Santa Cruz Mountains (Balance Hydrologics, Inc. 1998). Redwood (*Sequoia sempervirens*) and Douglas-fir (*Pseudotsuga menziesii*) are the dominant overstory species within the less urbanized portions of Zayante and Lompico Creeks.

**Summary of Field Outing**

On July 10, 2001 NMFS staff participated in the preharvest inspection for the proposed plan. Much of the plan area was reviewed in the field to include the main haul route, the proposed

helicopter landing and service area, all of the fishbearing stream within harvest boundaries and more than half of the Class II and III watercourses.

A number of flagged WLPZs were measured to evaluate consistency between ground operations and those proposed in the THP document. At random, a Class I and Class II watercourse and lake protection zone (WLPZ) buffer zone were measured using a loggers tape. The Class I measured 150 feet; the Class II measured 72 feet (3 feet short of meeting the standards identified in the THP of 75 feet). All watercourses reviewed had been appropriately classified by the forester and his technicians. The stand of timber consists mainly of medium to densely stocked second growth redwoods near the watercourses to mixed redwood and Douglas-fir along the midslope and ridge areas. All harvest trees within the Class I WLPZ were marked and facilitated the assessment of the expected postharvest canopy conditions. There were very few trees marked for harvest within the flagged Class I WLPZ. Trees within the Class II WLPZs and along Class IIIs were not marked prior to the preharvest inspection and thus made review and assessment of postharvest conditions more problematic. Inner gorge zones, unstable slopes and exposed bedrock occur across the ownership.

The RPF indicated, due to current existing overstory canopy levels along the Class I portion of Lompico Creek, a no-harvest zone of approximately 75 feet (slope distance) would be implemented for this THP. This prescription was not described in the THP due to the RPF concluding, post THP submission, that adequate pre-harvest canopy conditions did not exist.

**Historical Impacts and Existing Conditions for Threatened Coho Salmon**

CCC ESU coho salmon are believed to have become extirpated from the San Lorenzo River watershed during the drought of the late 1980s through the early 1990s. When rainfall events did occur during this period, it was often during the later portion of the winter. Since the upstream migration of spawning coho salmon in coastal California runs between November and January, it is likely the prolonged drought was the proximate cause in the species' extirpation. The ultimate reason likely resulting in extirpation of the species within the San Lorenzo River watershed, including Zayante Creek, is likely due to impacts from anthropogenic habitat alterations. The population of

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CCC ESU coho salmon experienced a spiraling decline (Table 1) as human impacts to the watershed became more pronounced. These impacts created instream habitat conditions unfavorable to the species' persistence within the watershed.

Overall, coho salmon (if present) in Lompico or Zayante Creeks are susceptible to any activity within the upper watershed, including effects associated with urbanization, timber harvest, private road construction and maintenance, septic tank failure, summer dam construction, and legal and illegal water diversions.

Table 1: Estimates of CCC ESU coho salmon spawning runs in the San Lorenzo River (State Water Resources Control Board (SWRCB) 1982)

| Year | Number Estimated by: | Estimated # of Adults |
|---|---|---|
| 1953-54 | SWRCB Staff | 2,367 - 4,7391 |
| 1954-55 | SWRCB Staff | 7,056 - 14,113 |
| 1964 | Johnson | 5,000 - 10,000 |
| 1965 | Calif. Fish & Wildlife Plan | 2,000 |
| 1970-71 | SWRCB Staff | 2,270 - 4,540 |
| 1971-72 | SWRCB Staff | 1,509 - 3,018 |
| 1972-73 | SWRCB Staff | 1,296 - 2,593 |
| 1976-77 | CDF&G Count | 174 |
| 1977-78 | County of Santa Cruz | 600 |
| 1978-79 | CDF&G Count | 100 |
| 1978-79 | SWRCB Staff | 0 |
| 1979-80 | CDF&G Count | 77 |
| 1980-81 | CDF&G Count* | (20) |
| 1981-82 | Kelly, CDF&G Game | "Just a few" |
| 1981-82 | Smith | Small non-sustaining population in Bean and Fall Creeks |

*None of the California Department of Fish and Game counts are complete, however, the 1980-1 count was extremely brief.

Systematic juvenile salmonid surveys by Alley (1999, 2000) within the San Lorenzo River and its tributaries have occurred since 1994. These surveys occurred on 33 sample sites and have failed to detect the presence of juvenile coho salmon.

A population should be large enough to have a high probability of surviving

environmental variation of the patterns and magnitudes observed in the past and expected in the future. Droughts, pinniped predation, cycles in ocean conditions, and upslope mass wasting events are considered normal aspects of the background environment to which the species has evolved adaptation strategies to persist. Due to the rate of anthropogenic-induced inputs into, and subsequent modifications of, coho salmon freshwater habitats, these habitats are destroyed faster than they are naturally created within the watershed. This has led to the extirpation of the species within the action area, the watershed, and most streams south of San Francisco Bay.

**Historical Impacts and Existing Conditions for Threatened Steelhead**

Steelhead trout populations in the CCC ESU have suffered a significant decline from historic levels. The extent of these declines are commensurate to the declines documented within the San Lorenzo River watershed (Table 2).

Table 2: Estimates of CCC ESU steelhead trout spawning runs in the San Lorenzo River (SWRCB 1982; Alley 2000). Estimates from Alley (2000), for 1996 through 2001, were based on juvenile population surveys and extrapolated as future adult spawning production. Prior estimates were derived from the given year's actual adult steelhead trout spawning effort.

| Year | Number Estimated by; | Estimated # of Adults |
|---|---|---|
| 1953-4 | SWRCB | 9,475 - 18,950 |
| 1954-5 | SWRCB | 28,225 - 56,450 |
| 1964 | Johnson | 20,000 |
| 1965 | Calif. Fish & Wildlife Plan | 23,000 |
| 1970-1 | SWRCB | 9,080 - 18,160 |
| 1971-2 | SWRCB | 6,035 - 12,070 |
| 1972-3 | SWRCB | 5,185 - 10,370 |
| 1976-77 | CDF&G Count | 1,614 |
| 1977-78 | County of Santa Cruz | 3,000 |
| 1978-79 | CDF&G Count | 625 |
| 1978-79 | SWRCB | 633 |
| 1979-80 | CDF&G Count | 496 |
| 1980-81 | CDF&G Count* | (261) |
| 1981-82 | Kelly, CDF&G | "good run" |
| 1996-97 | Alley | 1,078 |
| 1997-98 | Alley | 1,784 |
| 1998-99 | Alley | 1,541 |
| 1999-2000 | Alley | 1,308 |

| | | |
|---|---|---|
| 2000-01 | Alley | 2,468 |

"None of the California Department of Fish and Game counts are complete, however, the 1980-1 count was extremely brief.

**Factors Affecting Declining Anadromous Salmonids**

A variety of factors, both anthropogenic and natural, have played a role in the decline of coho salmon and steelhead trout in Zayante and Lompico Creeks. Natural events, such as floods, droughts, and ocean productivity cycles, have adversely affected steelhead trout and coho salmon populations throughout their evolutionary history and yet both species persisted. However, the adverse affects of natural factors and the pervasive anthropogenic destruction and degradations of essential freshwater habitats have dramatically reduced the resiliency of both species. The following is a summary of factors affecting spawning and rearing habitats in the action area.

Human Population Growth and Urbanization.

Human population growth, with its attendant increased demand for resources may be the "most clear and present danger" to native fishes in California (Thelander 1994). Effects associated with urbanization included wet and dry season runoff, impaired water quality, and increased sedimentation that are typically associated with lower fish species diversity and abundance (Weaver and Garman 1994). The negative impacts of urbanization are apparent throughout Zayante and Lompico Creeks (CDF&G 1996) resulting in decreased habitat quality throughout the two watersheds.

Water Diversion.

Since the mid-1800s, the majority of watersheds in California have been transformed from their natural conditions by the construction of water diversion and storage facilities. Depletion and storage of natural flows have drastically altered natural hydrological cycles in many California rivers and streams, including those inhebited by CCC ESU coho salmon and CCC ESU steelhead trout.

Demands on upstream and downstream resources likely occur and may reduce the quantity of surface discharge and essential features of critical habitat for rearing and emigrating coho salmon. Ground water within the Lompico Aquifer in the San Lorenzo Valley is overdrafted by as much as 450% (Al Haynes, personnel communication 2001) and ground water levels have dropped as low as 90 feet below historic levels (Denise Duffy & Associates, Inc. 1999).

While amounts of water diverted, directly or through groundwater drafting, from Lompico and Zayante are unknown, it is likely flows are reduced to some extent as indicated by the domestic water diversion operated by the Lompico Water District. Any such increased water demand for domestic or agricultural uses that decreases stream flows will negatively affect salmonids. Alteration of streamflows negatively affect salmonids for a variety of reasons: migration delays resulting from insufficient flows or habitat barriers; loss of usable habitats due to dewatering and blockage; stranding of fish resulting from rapid flow fluctuations; entrainment of juveniles into unscreened or poorly

screened diversions; and increased lethal and sublethal effects resulting from increased water temperatures (Bergren and Filardo 1993; Chapman and Bjornn 1968; NMFS 1996). In addition, reduced flows degrade or diminish fish habitats via increased deposition of fine sediments in spawning gravels, decreased recruitment of new spawning gravels, and encroachment of riparian and non-endemic vegetation into spawning and rearing areas.

**Conclusions**

Lompico Creek has been severely degraded due to anthropogenic activities within the watershed. Instream conditions within the Lompico Creek watershed were evaluated by CDF&G (1996) and are considered heavily impaired due to: (1) sedimentation from illegal grading of private roads, home sites and the lack of vegetation around home sites; (2) degraded water quality from septic systems and storm water runoff; (3) lack of stream flows due to water diversions (riparian and appropriative) during critical summer flows, and (4) timber harvest practices which add sediment to the creek. A stream inventory conducted by CDF&G in August 1997 concluded that: instream temperatures were above optimal levels for juvenile salmonids; complex high quality instream woody debris was lacking; area should be treated to reduce the potential of fine sediment introduction to the stream; trash should be removed from creek; dams should be removed and exotic plants should be removed from the riparian zone.

In light of the aforementioned issues, the NMFS proposes the following recommendations to THP 1-01-170 SCR to ensure operations minimize the likelihood of unauthorized take of CCC ESU coho salmon (if present) and CCC ESU steelhead trout in the Lompico Creek watershed:

**Class I and Class II Watercourses**

To protect the functions and processes of the riparian zone an Aquatic Protection Zone (APZ) shall be established and measured from the outer edge of the bankfull channel (at the 20-year return interval) out to a site potential tree height for this zone: 150 feet. This distance is measured horizontally. Within the APZ the following restrictions apply:

'Other than road related activities, no timber management operations shall be allowed within the APZ or adjacent bankfull channel.
'All ground-based equipment shall be excluded from this zone (EEZ).
'No salvage or sanitation logging, exemption harvest, or emergency timber operations

IFS.

'No burning or mechanical site preparation.
'Full suspension when yarding across the APZ.
'No yarding of felled tailhold trees or cable corridor trees within the APZ.
'Retain trees within the APZ damaged during timber operations.
'Directionally fell trees and yard away from the APZ.
'For ground-based yarding used on slopes >50% adjacent to the APZ, and roads within 100 feet of an APZ, the EEZ will be increased by 100 feet.

**Class III Watercourses**

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For all Class III watercourses within the THP boundary there shall be a 50 foot Aquatic Management Zone (AMZ) for slopes <30% and a 100 foot AMZ for slopes >30%, as measured horizontally from the outer edge of the channel. Within the AMZ the following restrictions apply:

'Other than road related activities, no timber management operations within 30 feet of the outer edge AMZ or adjacent bankfull channel.
'The AMZ shall be an EEZ for ground-based equipment.
'The outer zone of the AMZ shall have 65% overstory canopy remaining post-harvest with at least 25% conifer canopy remaining post-harvest.
'Conifer tree size distributions will be left representative of the pre-harvest stand.
'No salvage or sanitation logging, exemption harvest, or emergency timber operations unless reviewed by NMFS.
'No burning or mechanical site preparation.
'Full suspension when yarding across the APZ without harvesting or yarding trees within the AMZ.
'Trees damaged or fallen for cable access, during timber operations, shall be retained within the AMZ.
'Directionally fall trees and yard away from Class III watercourses.
'For ground-based yarding used on slopes >50% adjacent to the AMZ, and roads within 100 feet of an AMZ, the EEZ will be increased by 100 feet.

Within all APZ's and AMZ's the following shall apply:

'No timber harvest activities other than falling and emergency road work during the winter period (November 15 – April 1).
'No operations within 48 hours after 1/4" of precipitation between April 1 and May 1.
'No timber operations within 24 hours after 1/4" of precipitation between May 1 and October 15.
'Between May 1 and October 15 erosion control facilities shall be installed on all used skid tails and logging roads prior to the end of the day if the National Weather Surface forecasts a 30% or more chance of rain within 24 hours.
'Roads and skid trails shall be outsloped wherever appropriate and feasible. Excess fill, perched material, outside berms and inside ditches shall be removed wherever appropriate and feasible.
'Visits to the plan area during the winter period shall be conducted at least three times with visits made to check for properly functioning drainage structures on truck roads, landings and skid trails. Site visits shall be document by the person conducting the visit with the inclusion of name, time, date, location, structure, function status and if additional erosion control measures where necessary.

**Additional Information**

Plan approval, even for those harvest plans reviewed by NMFS, does not constitute authorization for the incidental taking of federally listed species pursuant to the ESA of 1973 (16 U.S.C. 1531 et seq.).

The NMFS reserves the right to conduct an inspection of active operations and/or post-harvest conditions under escort by the CDF inspector. Thank you for your cooperation in this matter. You may reach me at 707-575-6059 if there are any questions.

Sincerely,

Patrick J. Rutten, Supervisor
Protected Resources Division
Santa Rosa Field Office
Enclosure

cc: Irma Lagomarsino, NMFS
Jim Lecky, NMFS

**References Cited**

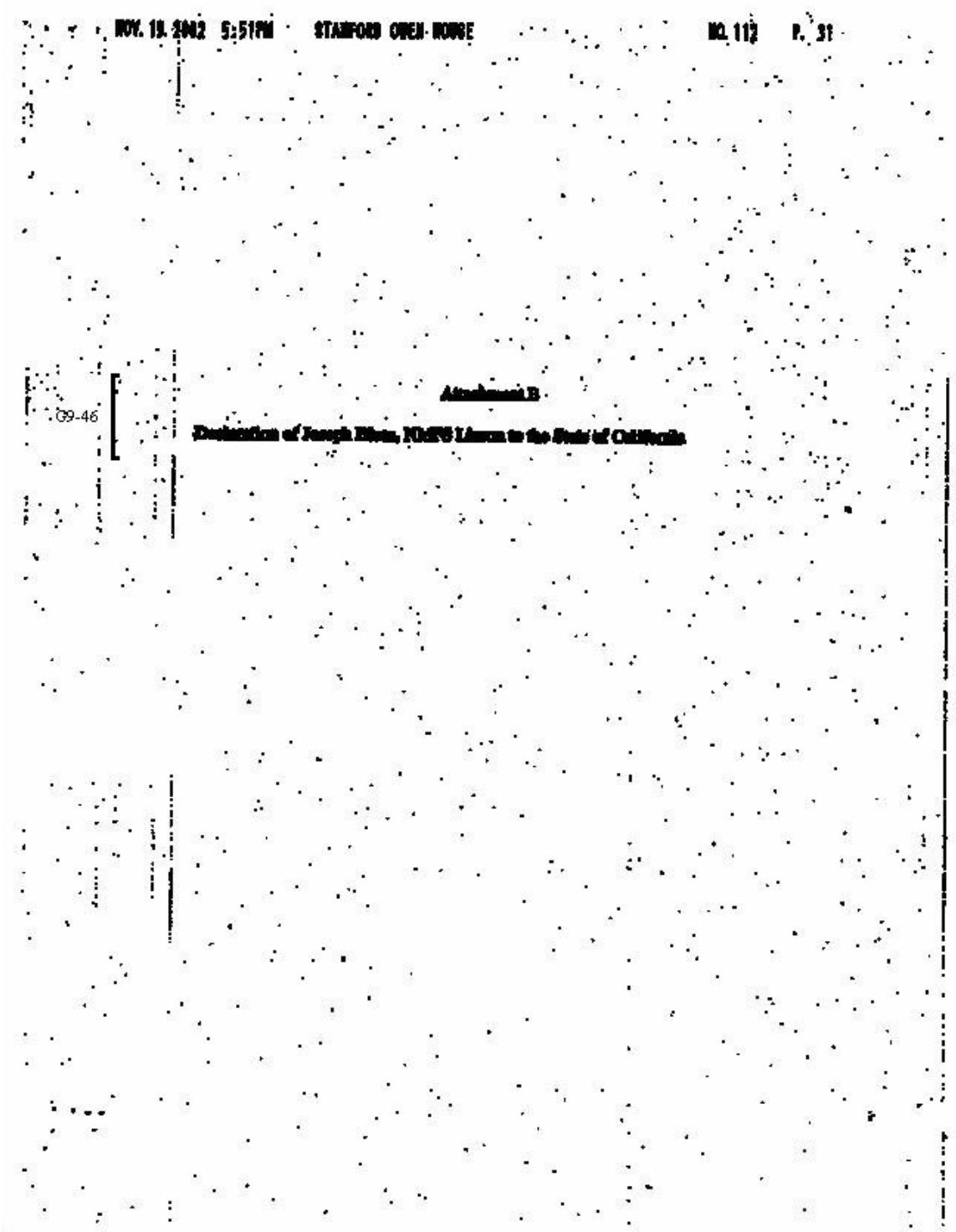
Alley, D. W. May 1999. Comparisons of juvenile steelhead densities, population estimates and habitat conditions for the San Lorenzo River, Santa Cruz County, California, 1994-98; with predicted adult returns. Prepared for City of Santa Cruz Water Dept., Santa Cruz County Environmental Planning and the San Lorenzo Valley Water District. Project# 150-02.

Alley, D. W. June 2000. Comparisons of juvenile steelhead densities, population estimates and habitat conditions for the San Lorenzo River, Santa Cruz County, California, 1995-99; with an index of adult returns. Prepared for the City of Santa Cruz Water Dept., Santa Cruz County Environmental Planning and the San Lorenzo Valley Water District. Project# 150-03.

Balance Hydrologics, Inc. 1998. An assessment of streambed conditions and erosion control efforts in the San Lorenzo River watershed, Santa Cruz County, California. Rep. Prepared for Environmental Health Dept., Santa Cruz Co., California. July 13, 1998.

Response to Comment G9-46

See response to Comment G9-3.



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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT**

**NORTHERN DISTRICT OF CALIFORNIA**

| | | |
|---|---|---|
| ENVIRONMENTAL PROTECTION INFORMATION CENTER, et al,<br><br>Plaintiffs,<br><br>v.<br>ANDREA TUTTLE, et al,<br><br>Defendants. | ) | Case No:00-0713-SC<br><br>DECLARATION OF JOSEPH BLUM<br><br>Date: June 2, 2000<br>Time: 10:00 a.m.<br>Courtroom: 1 |

I, Joseph Blum, declare the following:

1. I am the Liaison to the State of California, National Marine Fisheries Service (NMFS), Southwest Region (SWR) and have held this position since 1998. Previously, I was the NMFS National Salmon Coordinator (1996-1998); Executive Director of the American Factory Trawler Association (1992-1996); Director of the Washington State Department of Fisheries (1986-1992); Deputy Regional Director, Pacific Region, United States Fish and Wildlife Service (FWS)(1984-1986); Assistant Regional Director - Environment, Pacific Region, FWS (1982-1984); Area Manager, Washington/Oregon, Pacific Region FWS (1976-1982); Project Leader Oil Shale/Non-energy Minerals, Headquarters, FWS (1974-1976); Endangered Species/Marine Mammal Division Chief, Headquarters, NMFS (1973-1974); and from 1964-1973 I served in several biological and administrative positions for the Alaska Department of Fish and Game, beginning as a field biologist and ending as Deputy Commissioner for Sport Fish and Game. I earned a Bachelor of Science Degree in Biology from the University of Santa Clara in 1963. I am responsible, among other things, for coordination between NMFS/SWR and State of California Agencies, Boards and Commissions that have responsibility for anadromous salmonids and other marine species, with particular emphasis on implementation of the Endangered Species Act. In this capacity, I am involved in issues pertaining to salmonid species protected under the ESA and the California Forest Practice Rules.

2. The NMFS has listed 10 species (evolutionarily significant units) of salmonids in California as threatened or endangered under the ESA since 1990. (55 FR 46,515; 61 FR 56,138; 62 FR 24,588; 62 FR 43,937; 63 FR 13,347; 64 FR 50,393; 65 FR 36,074.) These 10 species include 2 species of coho salmon, 3 species of chinook salmon, and 5 species of steelhead from the Oregon border to Malibu Creek in the Los Angeles area. Forestry activities over the years have been one of the primary factors of decline for the majority of these species. (61 FR 56,138; 62 FR 24,588; 62 FR 43,937; 64 FR 50,393; 65 FR 36,074.)

3. In general, forestry activities harm salmonids by causing sedimentation of the streams which destroys salmon and steelhead eggs and impairs the ability of adults and juveniles to survive, reducing stream complexity when trees in or near the streams are harvested, reducing large woody debris from the riparian areas as well as the streambed itself, causing increased stream temperatures due to inadequate canopy cover, blocking fish passage through poorly designed, constructed and maintained stream crossings, reducing stream-flow through removing water for dust abatement on roads, and impairing water quality by adding toxic chemicals from vehicles or vegetation control. Salmonids are often impacted by forestry activities on streams which do not support runs of listed salmonids because many of these streams drain into streams with listed salmonids. Moreover, intermittent or seasonal streams also are important to properly functioning aquatic systems and forestry activities often destroy the ability of these streams to reduce siltation by removing trees that stabilize the associated hillslopes and by reducing the natural production of large woody debris. Although the California Forest Practice Rules purport to mandate protection of sensitive resources such as anadromous salmonids, the Rules, their implementation and enforcement do not accomplish this objective.

4. NMFS recently reviewed the California Forest Practice Rules during its reconsideration and reversal of its 1998 decision that the Northern California ESU of steelhead did not warrant listing under the ESA. (65 FR 36,074 - Northern California ESU of steelhead listed as threatened on June 7, 2000.) NMFS' review included the Board of Forestry's interim revisions to the California Forest Practice Rules which become effective July 1, 2000 (and are due to expire on December 31, 2000). NMFS concluded that the California Forest Practice Rules with the recently adopted interim changes are inadequate to protect anadromous salmonids or provide for properly functioning habitat conditions. (65 FR 36,074, 36,084-36,085.) Specifically, the California Forest Practice Rules with the interim changes lack critical elements necessary to avoid, minimize and/or mitigate adverse site-specific and cumulative watershed impacts on salmonid populations.

5. NMFS has many responsibilities as a regulatory agency charged with administering the ESA, but it is not responsible for nor does it have the staff resources to participate in state regulatory processes to ensure they are in compliance with the ESA. However, in an effort to work with the State to protect salmonids, NMFS agreed to review some of the timber harvest plans submitted to the California Department of Forestry and Fire Protection (CDF) to ensure the plans were designed to avoid take of listed salmonids. Since 1997, CDF has sent over 1000 timber harvest plans to NMFS for review. NMFS' staff do not have time to review even a small fraction of the timber harvest plans provided by the CDF and have probably reviewed only 1% of those received. NMFS' reviews consist of reviewing the timber harvest plan application, participating in on-site field inspections (pre-harvest inspections) of the proposed plan, and attending meetings with the applicant and/or the CDF following the site inspection to discuss findings and options to protect salmonids. Every timber harvest plan that NMFS has reviewed has been found to have disparities between what was written in the timber harvest plan and what NMFS staff found to be occurring on the ground during pre-harvest inspections. The disparities generally involved the width of buffer areas along streams, sometimes the plan called for wider buffers than what was actually done on the ground and sometimes the buffer width in the field was wider than described in the plan. These discrepancies are only discovered if a timber harvest plan is reviewed and a site inspection occurs. The Board of Forestry and CDF have received testimony from the state agencies charged with reviewing timber harvest plans and those agencies report varying degrees of review far below 100%; the California Department of Fish and Game, for example, currently reviews only 14% of the timber harvest plans provided to them. For every timber harvest plan which NMFS has reviewed, NMFS has suggested modifications, sometimes substantial modifications, that should be made to the timber harvest plan to avoid take of listed salmonids and adverse modification of their critical habitat. Most of NMFS' suggested modifications have been incorporated by CDF into timber harvest plans. In two instances, however, Sulfur Creek and THP520 (prior to Pacific Lumber Company acquisition), NMFS informed CDF that the timber

harvest plan was likely to harm listed coho and CDF issued the timber harvest plan anyway without requiring any modifications to address NMFS' concerns.

6. NMFS is aware of examples where timber harvest plans which have been approved by CDF as in compliance with the California Forest Practice Rules have likely resulted in take of listed salmonids or adverse modification of their critical habitat. 99% of the timber harvest plans submitted to the CDF are never reviewed by NMFS. Considering the fact that every timber harvest plan NMFS has reviewed would likely have resulted in take of listed salmonids or adverse modification of critical habitat without NMFS' suggested modifications, it is likely that many of the remaining 99% which NMFS has not reviewed may result in take or adverse modification of critical habitat.

7. In my official capacity as NMFS' representative, I have testified before the Board of Forestry and/or its Interim Committee, on no less than 10 occasions and explained that the California Forest Practice Rules are inadequate to protect and conserve salmonids. I have explained that timber activities under timber harvest plans approved under the California Forest Practice Rules are resulting in the destruction of salmonid habitat and are harming listed salmonids. I have presented the Board of Forestry with guidelines for forestry that, if followed, would reduce the likelihood of harming salmonids and I have provided the Board of Forestry and CDF with approximately 100 scientific citations documenting risks to salmonids associated with timber harvesting and related activities. Numerous times, before the Board of Forestry's Interim Committee and before the Board of Forestry itself, I have recommended that the Board of Forestry adopt the NMFS' Short-Term HCP Guidelines as interim rules while the Board of Forestry promulgates permanent rules that incorporate adequate salmonid protection. Further, in my official capacity, I have explained to the Board of Forestry and officials at CDF on numerous occasions that the state may be liable under the ESA for promulgating a regulatory scheme which they are fully aware results in take of listed salmonids and adverse modification of critical habitat. The only action the Board of Forestry has taken to address these issues is the adoption of the inadequate interim changes to the California Forest Practice Rules.

Pursuant to 28 U.S.C. § 1746, I declare under the penalty of perjury that this information is true and correct.

Executed this __th day of June, 2000, in Sacramento, California

Joseph Blum
650 Capitol Mall
Sacramento, CA 95814
(916)498-6696

Letter - G10. Signatory -Pacific Rivers Council.

# 57213

PACIFIC RIVERS COUNCIL

*protect the best, restore the rest*



***Via Express Mail and Electronic Mail***

19 November 2002

James Bond
National Marine Fisheries Service
1655 Heindon Road
Arcata, CA 95521
*Fax 707-825-4840*



Amedee Brickey
U.S. Fish and Wildlife Service
1655 Heindon Road
Arcata, CA 95521
*Fax 707-822-8411*

**Re: Comments on Simpson Resource Company's Habitat Conservation Plan and Candidate Conservation Agreement/Incidental Take and Enhancement of Survival permits for Timberlands in Del Norte and Humboldt Counties, California.**

Dear Mr. Bond and Ms. Brickey:

Pacific Rivers Council (PRC) is attaching a critical scientific review of the Services' proposed approval of Simpson Resource Company's Habitat Conservation Plan and Incidental Take and Enhancement of Survival permits. With this letter, these documents are submitted on behalf of twelve local, regional and national organizations: Pacific Rivers Council, Defenders of Wildlife, Northcoast Environmental Center, Pacific Coast Federation of Fishermen's Associations, the Institute for Fisheries Resources, Friends of the River, Redwood Chapter Sierra Club, Smith River Project, Humboldt Watershed Council, Friends of the Eel River and Friends of Del Norte County.

The attached review reflects the input of highly qualified experts on amphibian biology, aquatic ecology, geomorphology and conservation biology. Based on the findings of the review panel, the undersigned groups are obliged to object to issuance of the proposed HCP/CCA and associated permits. We do not find that the Services have demonstrated a sound scientific basis for the proposal and for the Services' requisite determination that the Plan meets the applicable legal standards, most notably including those under Sections 10 and 7 of the Endangered Species Act or satisfying the intent of the current California Forest Practice Rules.

*PO Box 10798 • Eugene, OR 97440 • (541) 345-0119 • Fax (541) 345-0710*

## Response to Comment G10-2

See Master Response 3 regarding cumulative effects.

## Response to Comment G10-3

Concerns regarding the consideration of existing baseline conditions in the Plan Area have been addressed in Master Response 1.

## Response to Comment G10-4

The Services have identified types of impacts and their severity, using information derived from cited scientific literature and the studies summarized in the Plan and its appendices. See response to Comment G4-15 and Master Response 9, regarding quantification of take. Further, the Handbook recognizes that in certain circumstances, determining the level of take may not be possible. Page 3-14 of the Handbook states that the ability to calculate the level of take "depends on the ability of the HCP participants to determine, to the extent possible, the number of individual animals of a covered species occupying the project or land use area or the number of habitat acres to be affected." The Plan does quantify the acreage for which Green Diamond is seeking incidental take coverage for ongoing timber harvesting and associated timber management activities. The Plan Area encompasses approximately 416,532 acres (IA Paragraph 2.1(a)). The distribution of covered species in the Plan Area and the spatial and temporal variation of this distribution preclude the ability to determine the number of individuals of the covered species that would be affected by implementing the Plan. In addition, the Plan's Operating Conservation Program applies measures to minimize and mitigate



Specific priority concerns include:

G10-2
- Management measures are unjustifiably assumed to provide for the needs of covered species without regard for existing and future cumulative watershed effects.

G10-3
- The Plan's stated objectives and the assessment of environmental effects are inappropriately founded on acceptance of a highly managed, degraded environmental baseline.

G10-4
- There is a general lack of quantitative supporting analysis regarding the expected level of management-related impact to covered species and their habitats, nor any associated analysis of how these impacts relate to the survival and recovery of these species. Absent such an assessment, there is no way to gauge the sufficiency of the proposed measures to achieve habitat protection and recovery. The analysis provided is conclusory and its basis is not disclosed. The Plan fails to identify and disclose the assumed mechanisms of biological impact and magnitude of effect, rendering the record opaque to scientific review and verification of assumptions.

G10-5
- The Plan is not spatially explicit and therefore does not ensure protection of biological refugia critical to survival and recovery of the covered species. Without specific information about where activities will take place in space and time, analysis of impacts of activity conducted under the Plan and the effects of conservation measures can be erroneous or misleading. The fragmentation of the covered species current range has significant demographic consequences on species persistence that needs to be accounted for in a formal analysis. If conservation measures are not carefully targeted to protect and enhance remaining self-sustaining populations and the specific habitat refugia that sustain them, the species will likely be lost from the planning area.

G10-6
- The sediment delivery objectives and measures lack a biologically-relevant basis and slope stability measures, including those for headwall and deep seated, currently inactive metastable areas, are inadequate to prevent harmful, management-induced alteration of the natural landslide regime, including timing, frequency, distribution and volume of mass-wasting.

G10-7
- Despite criticism of the current California Forest Practice Rules from the Services and independent critics, the proposed riparian protection measures are not better than current rules and could actually provide less than current rules, e.g.,

impacts to both the ITP and ESP species even though minimization and mitigation of impacts is not expressly required in the ESP approval criteria. See AHCP/CCAA Section 7.1 and the response to Comment G9-13.

Green Diamond has designed the Operating Conservation Program to, among other things, evaluate, minimize, and mitigate the impacts of Green Diamond's operations and forest management activities on the covered species and other similarly situated species. A description of the covered activities, including those that may cause take (in the terms of the commenter, "assumed mechanisms of biological impact"), is provided in AHCP/CCAA Section 2. AHCP/CCAA Section 5 describes the relationship between potential impacts and the Covered Species and their habitats. A more detailed literature review of the potential effects of timber management is provided in AHCP/CCAA Appendix E.

See Master Response 9 regarding quantitative analysis of expected levels of impact. As the comment reflects, Green Diamond used a qualitative analysis of potential impacts in the Plan wherever quantitative data were not available or useful in the impacts analysis. The Services have reviewed those analyses and find that they were both appropriate and correct. Qualitative analyses are acceptable and highly useful tools in conservation planning, particularly when based upon the degree of site-specific information and experience that Green Diamond and the Services have with the impacts identified in the Plan.

## Response to Comment G10-5

The geographic area where incidental take will be authorized, the covered activities will occur, and the Operating Conservation Program will be implemented is called the "Plan Area" and, as explained in greater detail in AHCP/CCAA Section 1.3.2.1, includes all commercial timberland acreage within eleven HPAs on the west slopes of the Klamath Mountains and the Coast Range of California where Green Diamond owns fee lands and harvesting rights, during the period of such ownership within the term of the Permits, subject to certain limitations. The 11 HPAs have been identified in Figure 1-1 and Table 1-1 of the Plan and described in AHCP/CCAA Section 1.3.2.4. This is the entire commercial timberland acreage analyzed in the Plan and the EIS (see EIS Section 1.4) to support the Plan's provisions allowing for additions and deletions of lands from the Plan Area over the term of the Plan and Permits. See Master Response 11.

The Services are issuing Permits for incidental take of the covered species, not for timber harvesting. The Services do not have the authority to authorize timber harvest operations. That authority lies with the CDF, and is exercised on a THP-specific basis that will require site-specific and activity-specific review by the State. The Services are issuing Permits that allow Green Diamond to take covered species throughout the Plan Area and over the 50-year term because the analyses in the EIS show that Green Diamond will be meeting the issuance criteria for both the ITP and the ESP (see Master Response 8). Some biological refugia of the covered species may be impacted during the implementation of the Plan. However, the Services do not believe that refugia critical to survival and recovery of the species will be lost.

## Response to Comment G10-6

Studies indicate that the input of sediment has perhaps the greatest negative effect on the covered species in the Plan Area. This is recognized in Plan's biological goals and objectives, which then guided the development of the measures in the Operating Conservation Program. As stated in AHCP/CCAA Section 6.1.2.2.4, the biological objective for reducing sediment delivery into watercourses is based on two targets:

1. Treat high or moderate priority road sites (classified in terms of likelihood to deliver sediment to Plan Area watercourses), to reduce the amount of road-related sediment at such sites by more than 46 percent (change high and moderate priority sites to low priority sites) within the first 15 years of the Permits, and the remaining percentage over the last 35 years of the Permits.

2. Achieve a 70 percent reduction in sediment delivery from management-related landslides in harvested steep streamside slopes compared to delivery volumes from appropriate reference areas within clearcut stands.

Based on the biological goals and these objectives, specific prescriptions have been developed and included in the Operating Conservation Program to address potential causes of sediment input. For example, road management measures are set forth in AHCP/CCAA Section 6.2.3 and harvest-related ground disturbance measures are set forth in AHCP/CCAA Section 6.2.4. An assessment of the conservation strategy's effectiveness in fulfilling the purposes of the Plan has been provided in AHCP/CCAA Section 7. In particular, see AHCP/CCAA Section 7.2.2.5 relating to Road Management Measures and Section 7.2.2.4 relating to Plan Measures and Strategy for Mass Wasting.

## Response to Comment G10-7

ESA section 10(a)(1)(B) requires that a conservation program minimize and mitigate the impacts of take to the maximum extent practicable - it does not require that a Plan exceed the measures included in the existing regulatory scheme on a measure-for-measure basis (see Master Response 8). The Operating Conservation Program supplements the CFPRs and all other existing governing laws. AHCP/CCAA Section 1.4.2; EIS Section 1.5.3.1; see also Master Response 7. Although the commenter believes protections for Class III streams are minimal, Green Diamond's site-specific application of stream class and seep and spring delineation, many of the features currently assumed to be Class III streams will in fact be classified as Class II streams with the implementation of the Plan. Therefore many of these features will have additional tree retention, and will likely result in additional late-seral habitat across the Plan Area. See also responses to Comments G4-27, G4-28, R1-49, R1-70, S1-3, S1-47 and S5-3, among others, relating to the applicability of the CFPRs in the Plan Area

## Response to Comment G10-8

Minimization of the alteration of the landslide regime is only one of many aspects of the Operating Conservation Program's strategy to reduce sediment load to Plan Area waterbodies. One of the objectives of the Operating Conservation Program is to reduce sediment delivery from management-related landslides in harvested steep streamside slopes by 70 percent compared to delivery volumes from appropriate reference areas within clearcut stands. These steep streamside slope areas are the source areas for the majority of the non-road related landslide sediment. AHCP/CCAA Section 6.1.2.2.4; see also Master Response 16 regarding the effectiveness of the 70 percent. Measures designed to address deep-seated landslides have been provided in AHCP/CCAA Section 6.2.2.3 and road placement has been addressed there. For example, Green Diamond will not construct new roads across active deep-seated landslide toes or scarps, or on steep (greater than 50 percent gradient) areas of dormant slides, without approval by a registered geologist and a registered professional forester with experience in road construction in steep forested terrain. AHCP/CCAA Section 6.2.2.3.6. Shallow rapid landslides have been addressed in AHCP/CCAA Section 6.2.2.4, which also states that road-related failures will be addressed by the road implementation plan (see AHCP/CCAA Section 6.2.3). The Services believe that these measures, including the Plan's road construction measures, together with other measures of the Operating Conservation Program, minimize alteration of the landslide regime sufficiently to satisfy the Permit issuance criteria discussed in EIS section 1.3.



G10-7

protection and restoration of coniferous large wood sources in riparian areas. The proposed riparian protection standards do not adequately emphasize the importance of creating late-successional streamside areas and retaining the largest trees. There is inadequate protection of Class III streams and headwall swales.

G10-8

- Plan measures do not adequately minimize alteration of the landslide regime. New roads are not adequately prevented in sensitive and unstable locations.

G10-9

- There is virtually no analysis regarding the relationship of this Plan to attainment of water quality standards and TMDLs for parameters other than temperature. Nor are the effects of herbicides on water quality and covered species addressed, although their use is associated with the activities covered in the Plan.

G10-10

- Monitoring and adaptive management measures lack mechanisms capable of detecting and implementing limits on cumulative watershed effects. Suspended sediment, not temperature, would best serve as a rapid response indicator. Fish response thresholds are absent, and amphibian response mechanisms are flawed.

With respect to the applicable decision standards, key problems are that:

G10-11

- ESA § 10(a)(2)(A)(i) requires that an HCP specify "the impact which will likely result from such taking." Yet, the Services do not specify or justify the actual level of take being authorized by the incidental take permit as required by the ESA. The Plan does not adequately quantify or otherwise adequately assess and limit the permitted take. This problem is inexorably related to inadequate safeguards in implementation and monitoring of the permit. The public review package lacks the type of information that must be in hand to make these determinations.

G10-12

- The Services must also find that the HCP will minimize and mitigate the impacts of such taking to the maximum extent practicable. ESA, § 10(a)(2)(B)(ii). It is the Services' explicit policy that "the record must contain some basis to conclude that the proposed program is the maximum that can be reasonably required of the applicant." HCP Handbook at 7-3. We find that the Services have failed to conduct the rigorous analysis required to demonstrate that the proposed HCP complies with the ESA's "maximum extent practicable" mandate when analyzing management options and setting standards for the minimization and mitigation of take. For example, comparisons with forestland HCP standards in the same bioregion should have been included in the supporting analysis. Failure to conduct adequate analysis related to this standard has produced an unsupported

## Response to Comment G10-9

The Plan provides an additional layer of regulation to the governing scheme provided by all applicable existing laws and regulations (AHCP/CCAA Section 1.4.2). Accordingly, Green Diamond must comply with requirements imposed under Federal and State water quality laws in addition to the requirements imposed under the Plan. However, the Plan acknowledges the TMDL process in AHCP/CCAA Section 4.3.6. Herbicides have been addressed in Master Response 4. Responses to Comments G2-3, G2-4, G2-17, G6-39 and G7-1, among others, address the fact that herbicide use is not a covered activity. Further, the responses to Comments G3-52 and G3-53, among others, address consideration in the Plan of the cumulative effects of herbicide use.

## Response to Comment G10-10

The Services believe that the rapid response measures (as discussed in AHCP/CCAA Section 6.2.5.1) are appropriate. The Plan includes a number of monitoring measures for sediment and the Services believe these are appropriate to carry out the Plan's purposes and meet the ESA approval criteria discussed in Master Response 8. While other monitoring regimes also could serve a useful purpose in other situations, the suite of measures included in the Plan are sufficient to serve the Plan's needs. See Master Response 8 and response to Comment G10-12. For example, the rapid response monitoring program for sediment includes monitoring of road-related delivery of fine sediments into Plan Area streams (turbidity), and evaluation of the effectiveness of the road upgrading measures (AHCP/CCAA Section 6.2.3.4) in reducing those inputs. (AHCP/CCAA Sections 6.2.5.1.4 and 6.3.5.2.4.) Turbidity will be measured in the Plan Area immediately above and below Class II-1 and II-2 watercourse crossings using the protocol identified in AHCP/CCAA Appendix D.1.5. Road surface erosion monitoring will compare changes in turbidity on individual road segments before and after road upgrading, and between roads which have been upgraded and those which have not. There will also be one permanent continuous monitoring station in each of the four drainages included in the Experimental Watersheds Program (see AHCP/CCAA Section 6.2.5.4).

## Response to Comment G10-11

Concerns regarding quantification of the level of take have been addressed in Master Response 9. See also response to Comments G4-15 and G10-4, among others.

## Response to Comment G10-12

As discussed in Master Response 8, the Services have sufficiently analyzed whether the Plan's conservation strategy meets the ESA requirement to minimize and mitigate the impacts of take to the maximum extent practicable. Further, ESA section 10(a)(1)(B) requires that a conservation program minimize and mitigate the impacts of take to the maximum extent practicable - it does not require that a proposed plan equal or exceed the measures included in previously-approved plans on a measure-for-measure basis. See related discussion in Master Response 6, regarding the Pacific Lumber Company HCP

## Response to Comment G10-13

As discussed in Master Response 9, the ESA requires analysis of the *impacts* of take. The Services believe that the analysis of the impacts of take in Green Diamond's Plan is based on best science and has a sound biological rationale. See responses to Comments G10-58, G10-51, G10-2, G10-13, J1-8, R1-15, S2-2 and S5-24, among others. The Plan and Permits address ESA Section 10(a) requirements. The ESA Section 7 process is separate, and is being addressed separately.

## Response to Comment G10-14

The criteria for issuance of an ESA Section 10 Permit have been discussed in AHCP/CCAA Section 1.4.1, EIS Section 1.3 and Master Response 8. The ESA Section 7 process is separate and is being addressed separately. The ESA does not require the Services to circulate a draft ESA Section 7 Biological Opinion for public review. The Services believe that the Operating Conservation Program is based on a sound biological rationale. See responses to Comments G10-58 and G10-51, among others. Further, the public will have the opportunity to review the Final EIS for a 30-day period following its publication**.**

## Response to Comment G10-15

The Services believe that the measures contained in the Operating Conservation Program are sufficiently vigorous and are likely to be successful. The adaptive management program provides a mechanism to adjust the Operating Conservation Program as appropriate, and the Services do not believe, as the commenter



G10-12 decision which implements impermissibly weak protection for the covered species.

G10-13 In approving an HCP, the Services must determine that the "taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild." ESA, § 10(a)(2)(B)(iv). Under Section 7, a biological opinion must make a similar jeopardy determination. We find that the Services lack a credible scientific basis for the mandatory jeopardy and mitigation findings. "The base mitigation strategy or initial minimization and mitigation measures which are implemented must be sufficiently vigorous so that the Service may reasonably believe that they will be successful." HCP Handbook at 3-24 to 3-25, see also Id at 3-19 (mitigation programs "should be based on sound biological rationale"). The jeopardy finding mandated under Section 10 is nearly identical to that required under Section 7(a)(2), which the ESA mandates be made using the best available scientific information. 16 U.S.C. § 1536(a)(2). To make these determinations, the Services need to know the full extent and nature of the take that will result from this HCP – yet as stated above and in the attached review, this kind of analysis is lacking.

G10-14 In sum, there is little or no supporting analysis provided to indicate how this decision meets the applicable decision standards. This decision deserves more careful scrutiny for its ecological consequences. Because approval will insulate the applicant, Simpson, from new regulatory requirements over the next 50 years, this decision must be based on a solid scientific rationale that justifies placing the public trust in this Plan versus the evolutionary process to which the state rules clearly are subject. It would have been appropriate to include at least a draft biological opinion in the review package. "It is now Service policy to begin integrating the section 7 and section 10 processes from the beginning of the HCP development phase; and to regard them as concurrent and related, not independent and sequential, processes." HCP Handbook at 3-16. The Handbook specifically directs the that "[t]he Services should provide information that documents compliance with the requirements of section 10(a)(2) of the ESA." Handbook at 6-22.

G10-15 The problems we have identified with the conservation strategies are not capable of remediation solely by adjusting the monitoring and adaptive management provisions. We remind the Services that adaptive management has a role when significant uncertainty exists regarding the long-term effects of implementing an HCP's conservation strategy, but it is not a substitute for adequate mitigation and jeopardy avoidance strategies in the HCP itself. Handbook at 3-24 to 3-25. "The base mitigation strategy or initial minimization and mitigation measures which are implemented must be sufficiently vigorous so that the Service may reasonably believe that they will be successful. . . . . The Services should not approve an HCP using conservation strategies that have a low likelihood of success." Id. at 3-25. In other words, the existence of an adaptive management program should not be used as a subterfuge for an inadequate conservation strategy in the HCP itself.

suggests, that it is a “subterfuge.” Regarding adaptive management, see responses to Comments C4-6, C4-29, G3-58, G3-59, G3-67, G3-72 through and including G3-77, G3-86, G5-2, G10-49, G10-53, G10-51, S1-14 and S5-32, among others.

We appreciate the time and effort that went into this proposal and strongly support Simpson's desire to manage their lands for the conservation of aquatic species. We urge the Services to continue working with Simpson to generate a final proposal that addresses the concerns we have raised. We stand ready to meet with the Service and Simpson to discuss our comments and how they may be addressed in a revised final proposal.

Thank you for your attention to our concerns.

Sincerely yours,

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And for

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# REVIEW OF SIMPSON RESOURCE COMPANY'S AQUATIC HABITAT CONSERVATION PLAN AND CANDIDATE CONSERVATION AGREEMENT

## A Proposed Action of the U.S. Fish and Wildlife Service and the National Marine Fisheries Service Under the Endangered Species Act

*By Don Ashton, Chris Frissell and Bill Trush*
*Edited by Mary Scurlock*



**18 November 2002**

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# REVIEW OF SIMPSON AQUATIC HABITAT CONSERVATION PLAN AND CANDIDATE CONSERVATION AGREEMENT

*By Don Ashton, Bill Trush, and Chris Frissell,*
*Edited by Mary Scurlock*

## I. INTRODUCTION

This report critiques a proposed decision by the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) ("the Services") pertaining to the logging-related activities of Simpson Resource Company on 416,531 acres in Humboldt and Del Norte Counties, California. The product of this decision is an agreement between the Services and Simpson that protects the company from prosecution under the Endangered Species Act for the next 50 years.

The plan covers eight salmonid fishes. The Southern Oregon/Northern California coho salmon, the California Coastal chinook, and the Northern California steelhead are all currently listed. The other covered fish are two other populations of chinook and one of steelhead and coastal cutthroat and rainbow trout. Two unlisted amphibians also are covered -- the southern torrent salamander and the tailed frog.

The NMFS is charged with conservation of the ocean-going species and the FWS with conservation of all others. In this decision, NMFS grants an "Incidental Take Permit" to Simpson allowing impacts to anadromous salmonid species pursuant to the terms of a "Habitat Conservation Plan." The FWS similarly grants an "Enhancement of Survival Permit" for the resident trout and amphibians pursuant to a "Candidate Conservation Agreement." The operative documents examined in this review are the two-volume Habitat Conservation Plan and Candidate Conservation Agreement and Appendices ("the Plan"), the Draft Environmental Impact Statement (DEIS), and the Implementation Agreement (IA). For simplicity, we will generally refer to the whole package as "the Plan" or the "AHCP."

By law, the Services' approval of the Plan must be based on a determination that Simpson's activities will not jeopardize the continued existence of covered species, among other decision criteria. ESA, 16 U.S.C. § 1539(a)(1)(B) and (2). For the unlisted species, the proposed actions must reduce the likelihood that these species will need to be listed in the future. 64 FR 32713; 50 CFR Part 17 (regulations governing CCAs); 64 FR 32726 (final policy for CCAs) (stating intent is to preclude or remove the need to list species).

The core operative provisions of the plan are contained in 49 pages appearing at Section 6.2 in Volume 1 of the HCP document, and in such appendices as are referenced in that section.

### A. Reviewer Goals

This review was conducted at the request of Pacific Rivers Council, whose overall goal is to ensure that the affected aquatic species receive the full level of protection to which they are